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Proposals for a Securities Market Law for Canada Volume 1



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Proposals for a Securities Market Law for Canada

Volume 1 Draft Act

by

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Preface

Background to the Securities Market Study

The recommendation of the Royal Commission on Banking and Finance in 1964 that the Canadian securities market be supervised by a federal body directed the attention of the federal government to the regulation of the securities market and resulted in the establishment of the Securities Task Force, under the direction of Marc Lalonde, then a special adviser to the Prime Minister, to prepare an analysis of existing regulatory mechanisms and to prepare papers for a federal-provincial meeting of administrators to discuss Canadian securities regulation. The meeting of administrators, held in November 1966, led to the creation of the Canadian Committee on Mutual Funds and Investment Contracts (which published its report in 1969). The Securities Task Force was reestablished the following summer under the direction of Professor J. Peter Williamson in the then newly created Department of Consumer and Corporate Affairs and a second federal-provincial conference of administrators was held in the fall of 1967. Nevertheless, despite regular intimations of the continued interest of the federal government in securities legislation, no concrete proposals were made.

In the succeeding years developments in the securities market itself emphasized the need for coordination of and federal involvement in its regulation. The stock exchanges and other self-regulatory bodies agreed to cooperate in the development of

a Canadian depository for securities; new techniques of automation opened up vistas of a national automated trading market combining the facilities of stock exchanges in Canada and possibly connected to exchanges elsewhere; and the provincial commissions, in recognition of the fact that even the new issues market is interprovincial in scope, increased their cooperation by adopting not only a substantially uniform securities act but also uniform policies under it. Moreover, a number of scandals associated particularly with the growth of offshore mutual funds forcefully demonstrated that the securities markets of the mid-twentieth century are not only interprovincial but international.

In light of such developments, the Corporate Research Branch of the Department of Consumer and Corporate Affairs undertook to study the Canadian securities market in order to make recommendations on the appropriate role of the federal government in its regulation. The recommendations were to take the form of "proposals", generally following the format of previous studies prepared for the Department, such as the *Proposals for a New Business Corporations Law for Canada* (1971), *Proposals for a Not-for-Profit Corporation Law for Canada* (1974) and *Proposals for a Mutual Fund Law for Canada* (1974). In short, they were to be characterized as recommendations to the government, embodied in a draft statute accompanied by an explanatory commentary, and published in two volumes in order to give interested persons an opportunity to consider and comment on them. The recommendations would not reflect government policy but rather the views of the authors of the proposals so that the government could develop its policy on the basis of a comprehensive analysis of the securities market and the issues involved in its regulation in light of the comments received on the recommendations. Background papers prepared by consultants to the Securities Market Study were also to be published as a companion volume to make public the studies that underlay the recommendations contained in the proposals.

The Study Process

In May 1973 Philip Anisman joined the Department of Consumer and Corporate Affairs as Director of the Corporate Research Branch in order to direct the Securities Market Study. A detailed outline of the Study was prepared and in late 1973 and early 1974 a number of consultants with expert knowledge of the Canadian securities market and of securities regulation generally were retained by the Corporate Research Branch to prepare the background papers for the Study. Preliminary versions of the

background papers were then written by the consultants and the departmental members of the Study group, and a meeting attended by the consultants and other advisers was held in November 1975 to discuss them and to settle the basic policies of the proposals. A list of all the advisers to the Study follows the Preface.

After that meeting a section-by-section outline of the *Proposals for a Securities Market Law for Canada* was prepared and circulated for comment to all the advisers. The draftsmen then allocated responsibility for the various parts of the *Proposals* among themselves, Philip Anisman accepting responsibility for parts 1 and 12 to 16, Warren Grover for parts 3 to 8 and John Howard for parts 9 to 11. (The definitions, to be included in part 2, were divided on the basis of their relation to the other parts.) The draftsmen met as they completed drafts of each part of the statute and accompanying commentary and discussed them in detail, after which they revised the initial drafts in light of their discussions. They then met in the summer of 1977 with James C. Baillie and J. Peter Williamson to discuss the revised version of the draft *Proposals* and again redrafted the various parts to reflect the comments expressed at those meetings. At each of these stages copies of the parts were also sent for comment to the consultants to whose papers they directly related and their comments too were taken into account in the revisions. The third complete revision of the draft *Proposals* formed the basis of the final meeting of the complete Study group consisting of the authors and the advisers in May 1978, at which meeting the comments of all of the participants in the Study were obtained on the policies embodied in the *Proposals* and the manner of their execution. Philip Anisman then prepared a final draft of the *Proposals* in light of the comments received which was reviewed by all of the authors. As a result of that review further revisions were made.

The *Proposals for a Securities Market Law for Canada* reflect developments through July 1978. A few developments after that time, like the amendments to the Canada Business Corporations Act which were passed in December 1978, have also been considered. The *Proposals* are, therefore, the result of over five years of study and work by the authors, the consultants and the other advisers.

A description of the process by which the *Proposals* were developed would be incomplete without indicating Peter Williamson's role in it. When the Study was initiated Peter Williamson, because of other commitments, was able to participate only as an adviser. However, as the Study progressed and his other obligations were fulfilled, the degree of his participation increased. When two consultants found themselves unable to complete their

background papers, he willingly accepted responsibility for them as is clear from the contents of the third volume of the *Proposals*. He subsequently met with the draftsmen to discuss the preliminary drafts of the *Proposals* and participated fully in the revision of the final draft. Because of the degree of his involvement and the value of his contribution, the draftsmen requested him to allow his name to be included as a coauthor. Without his participation throughout the Study and especially in its final stages, the quality of the *Proposals* would have suffered substantially.

The Proposals for a Securities Market Law for Canada

The *Proposals* are intended as a discussion document to facilitate the formulation by the Government of Canada of its policy on the regulation of the Canadian securities market. They reflect the recommendations of the authors, as modified by the Study process, both in the Draft Act and the Commentary. In preparing the *Proposals* the authors attempted to take into account not only Canadian regulatory experience with the securities market but also relevant experience from elsewhere. The *Proposals* therefore embody the three basic techniques for regulation of corporate and other activities developed initially in England and refined in other common law countries and especially in the United States which has the largest and most active securities market.

The sixteen parts into which the *Proposals* are divided are readily classifiable in terms of the three regulatory techniques. Parts 4 through 7 impose disclosure requirements on issuers and others both in connection with new issues and on a continuing basis, thus adopting the device initially promoted by Gladstone in the last century for the regulation of the activities of companies incorporated in England, refined by the United States Congress in its securities laws, and now a cornerstone of the provincial securities laws in Canada. Parts 8 through 11 utilize licensing as a basis for regulating the activities of market actors, whether brokers, dealers or self-regulatory organizations, again reflecting English origins subsequently adapted to North American experience. And parts 12 through 14 prohibit improper conduct and prescribe the civil and criminal remedies available against persons who engage in such conduct. (The remaining parts of the *Proposals* deal with facilitating provisions relating to the coverage and administration of the substantive parts just outlined.)

The division of the *Proposals* into parts is not exclusively a result of organizational convenience. It is also intended to facilitate discussion of the various recommendations contained in them and the adoption, and possibly the severance, of whichever parts

the Government decides to retain after it has received comments. Although the *Proposals* as they now stand contain a scheme for the regulation of the Canadian securities market that is likely within Parliament's jurisdiction to enact, it is hoped that they will provide a basis for discussion not only with interested citizens but also with provincial governments that will ultimately lead to a coordinated and cooperative legislative scheme for the regulation of all aspects of the Canadian securities market.

Acknowledgements

A study of the nature and duration of this one cannot be completed without the authors incurring a large number of debts, intellectual and otherwise. The most obvious, both from the substance of the *Proposals* and from the third volume, are those owed to the consultants and other advisers not only for the valuable suggestions and comments in their papers and letters and at the meetings of the Study group, but also for the spirit of friendship and encouragement that they offered throughout the Study.

A number of persons, not included in the list of advisers, attended the meetings of the Study group and made substantial contributions. We were fortunate that the visits to Canada of Professor Robert Baxt, of Monash University in Australia, coincided with the meetings of the Study group; he attended both and made a number of suggestions that are reflected in the *Proposals*. The *Proposals* were also improved by the comments of Miles H. Pepper, a senior draftsman in the Department of Justice who carefully reviewed the draft *Proposals* and attended the final meeting last May.

Shortly after the Study was undertaken, Philip Anisman visited the Investment Dealers Association of Canada and each of the stock exchanges in Canada to describe the Study and to request their cooperation in providing data on various aspects of their activities. All of them were cooperative and most hospitable. In particular, the Montreal and Toronto Stock Exchanges provided useful data for the background papers on the economics of the securities market and on the functioning of Canadian financial institutions and the Investment Dealers Association provided a substantial amount of information relating to those papers and to the paper on self-regulation. We are especially grateful to Murray Cox, the Director of Research for the Investment Dealers Association, for his unremitting good humour and cooperation in the face of numerous requests for information.

The contributions of two persons are deserving of special thanks. James C. Baillie, until his appointment as Chairman of the

Ontario Securities Commission, not only acted as an adviser to the Study and as coauthor of one of the background papers but also met with the authors to discuss preliminary drafts of the *Proposals*. While all the authors could only applaud his appointment to the Ontario commission, we viewed it with much ambivalence, for it meant the loss to us of his valuable insights, advice and criticism.

The authors also owe a substantial and pervasive debt to Professor Louis Loss of Harvard University, the doyen of securities lawyers throughout the world. Not only did he generously take time from a very busy schedule to review and discuss the initial outline of the Study, but he also arranged to have the authors invited to his meetings with the Committee on Federal Regulation of Securities of the American Bar Association to discuss the various tentative drafts of the *Federal Securities Code* being prepared by him for the American Law Institute. His personal kindness was exceeded only by the influence of his code which integrates a vast amount of legislative, administrative and judicial experience with the regulation of the securities market in the United States. Without the example of the code the task of the authors would have been far more arduous and the *Proposals* far less complete.

The authors' annual visits to the meetings in Washington during the last five years were made even more pleasurable by the warm hospitality of Kenneth J. Bialkin, then the Chairman of the American Bar Association Committee on Federal Regulation of Securities, and of Paul Wolkin of the American Law Institute.

A number of people who helped in the preparation of the *Proposals* merit mention. Thomas Linden and Peter Doherty, research officers in the Corporate Research Branch, Consumer and Corporate Affairs Canada, prepared background materials in the early stages of the Study that were sent to the consultants in connection with the preparation of their papers. And Mark Zigler, a recent graduate of the University of Toronto Faculty of Law, edited all of the background papers to make them consistent in form.

The French version of the Draft Act and Commentary was prepared under the supervision of Yves Lauzon of the Faculty of Law, University of Montreal. Professor Lauzon gathered and coordinated the work of a team of lawyers consisting of Pierre Côté of the University of Montreal, and Michel Breton and Lucien Perron, both corporate practitioners in Montreal. They are especially deserving of gratitude for the care they have taken in the face of the substantial pressure of short deadlines.

The French versions of the background papers were prepared

by the Translation Bureau of Consumer and Corporate Affairs Canada. All of them were reviewed by and under the supervision of Jean R. Lajoie, a commissioner on the Quebec Securities Commission. Again the care taken in the task was more than could reasonably be expected in the circumstances.

It is all too easy for authors to forget the substantial effort that must be expended in publishing any book. The editorial details of layout and negotiations with printers and binders are at best taxing and often close to unbearable. All of these matters in respect of the *Proposals* were handled by Eiko Emori who was retained by the department as the designer for all three volumes and who has supervised their progress through the press with painstaking care and remarkable devotion. She has more than earned our gratitude and our respect for her professionalism.

After Philip Anisman left the department the task of dealing with internal matters relating to the completion and publication of the *Proposals* fell to Dleap Hall. His attention to the necessary details and his efforts to hasten publication have contributed substantially to the culmination of the Study.

Finally, it goes without saying that secretarial assistance is essential to the completion of any published work. In this regard all of us have been more than fortunate. We each owe a substantial debt to our secretaries, Philip Anisman to Barbara Dingwall and Evelyn Chiu in the Corporate Research Branch and to Joy Graham at Osgoode Hall Law School, and John Howard to Carmen Caron, for their unfailing and cheerful efforts during the preparation of the *Proposals* and to Jo-Ann Deschamps for assisting with the typing of the final manuscript.

January 1979

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Table of Abbreviations Used in This Work

This table lists, in the left-hand column, short forms for documents, reports and books that are frequently cited in *Proposals for a Securities Market Law for Canada*. Short forms for titles of reports appear in large and small capital letters, thus: ALI FEDERAL SECURITIES CODE; KIMBER REPORT. The short form for books is given by author name in large and small capitals: L. Loss. Statutes and regulations are shown in upper and lower case Roman letters. Background papers in this volume are cited by author name, in italics.

1. *Statutes*

CANADA

Alberta Securities Act

Alberta Securities Act, R.S.A.
1970, c. 333, as amended

Bank Act

Bank Act, R.S.C. 1970, c. B-1, as
amended

British Columbia Securities
Act

British Columbia Securities Act,
S.B.C. 1967, c. 45, as amended

Canada Business
Corporations Act

Canada Business Corporations
Act, S.C. 1974-75, c. 33, as
amended

Canada Corporations Act	Canada Corporations Act, R.S.C. 1970, c. C-32, as amended
Criminal Code	Criminal Code, R.S.C. 1970, c. C-34, as amended
Federal Court Act	Federal Court Act, R.S.C. 1970, 2d Supp., c. 10
Income Tax Act	Income Tax Act, S.C. 1970-71, c. 63, as amended
Interpretation Act	Interpretation Act, R.S.C. 1970, c. I-23
Manitoba Securities Act	Manitoba Securities Act, R.S.M. 1970, c. S50, as amended
New Brunswick Securities Act	New Brunswick Securities Frauds Prevention Act, R.S.N.B. 1973, c. S-6
Newfoundland Securities Act	Newfoundland Securities Act, R.S.N. 1970, c. 349, as amended
Northwest Territories Securities Ordinance	Northwest Territories Securities Ordinance, R.O.N.W.T. 1971, c. 17
Nova Scotia Securities Act	Nova Scotia Securities Act, R.S.N.S. 1967, c. 280, as amended
Ontario Business Corporations Act	Ontario Business Corporations Act, R.S.O. 1970, c. 53, as amended
Ontario Securities Act	Ontario Securities Act, R.S.O. 1970, c. 426, as amended
Ontario Bill 154	Bill 154, The Securities Act, 1972, Ontario, 29th Legis., 2nd Sess. (First Reading, June 1, 1972)
Ontario Bill 75	Bill 75, The Securities Act, 1974, Ontario, 29th Legis., 4th Sess. (First Reading, June 7, 1974)

Ontario Bill 98	Bill 98, The Securities Act, 1975, Ontario, 29th Legis., 5th Sess. (First Reading, May 30, 1975)
Ontario Bill 20	Bill 20, The Securities Act, 1977, Ontario, 30th Legis., 4th Sess. (First Reading, April 5, 1977)
Ontario Bill 30	Bill 30, The Securities Act, 1977, Ontario, 31st Legis., 1st Sess. (First Reading, June 29, 1977)
Ontario Bill 7 (2d Reading)	Bill 7, The Securities Act, 1978, Ontario, 31st Legis., 2d Sess. (Second Reading, April 6, 1978) (Reprinted for consideration by the Administration of Justice Committee)
Ontario Securities Act, 1978	Bill 7, The Securities Act, 1978, Ontario, 31st Legis., 2d Sess. (Third Reading, June 23, 1978)
Prince Edward Island Securities Act	Prince Edward Island Securities Act, R.S.P.E.I. 1974, c. S-4
Quebec Securities Act	Quebec Securities Act, R.S.Q. 1964, c. 274, as amended
Saskatchewan Securities Act	Saskatchewan Securities Act, 1967, S.S. 1967, c. 81, as amended
Telecommunications Act	Telecommunications Act, Bill C-24, 30th Parl., 3d Sess. (First Reading, January 26, 1978)
Yukon Securities Ordinance	Yukon Territories Securities Ordinance, O.Y.T. 1971, c. 1

UNITED STATES

Administrative Procedure Act	Administrative Procedure Act, 60 Stat. 237, 5 U.S.C., ss. 551-706
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Securities Act of 1933	Securities Act of 1933, 48 Stat. 74, 15 U.S.C., ss. 77a-77aa
Securities Exchange Act of 1934	Securities Exchange Act of 1934, 48 Stat. 881, 15 U.S.C., ss. 78a-78jj
2. <i>Regulations</i>	
Alberta Securities Regulations	Alberta Securities Regulations, Alta. Reg. 80/72, as amended
British Columbia Securities Regulations	British Columbia Securities Regulations, B.C. Reg. 193/67, as amended
Canada Business Corporations Regulations	Canada Business Corporations Act Regulations, SOR 75-682, P.C. 1975-2820, Dec. 12, 1975, as amended
Canada Corporations Regulations	Canada Corporations Act Regulations, SOR 76-22, P.C. 1975-3001, Jan. 14, 1976, as amended
Manitoba Securities Regulations	Manitoba Securities Regulations, R.R. Man., Reg. S50-R1, as amended
Ontario Business Corporations Regulations	Ontario Business Corporations Regulations, R.R.O. 1970, Reg. 492/70, as amended
Ontario Securities Regulations	Ontario Securities Regulations, R.R.O. 1970, Reg. 794/70, as amended
Saskatchewan Securities Regulations	Saskatchewan Securities Regulations, Sask. Reg. 241/67, as amended

3. *Self-Regulatory*

ALI Federal Securities Code	American Law Institute, Federal Securities Code, Proposed Official Draft (March 15, 1978) (L. Loss, Reporter)
ALI Federal Securities Code, Tent. Drafts Nos. 1-6	American Law Institute, Federal Securities Code, Tent. Drafts Nos. 1-6 (1972-77) (L. Loss, Reporter)
ALI Federal Securities Code, Reporter's Revision of Tent. Drafts Nos. 1-3	American Law Institute, Federal Securities Code, Reporter's Revision of Text of Tent. Drafts Nos. 1-3 (1974) (L. Loss, Reporter)

TABLE OF CONTENTS

	Part 1: Title and Policy of Act	DRAFT ACT
SECTION		
1.01	Short title	1
1.02	Securities market policy for Canada	1
Part 2: Definitions		
2.01	“Advertisement”	3
2.02	“Adviser”	3
2.03	“Affiliate”	3
2.04	“Associate”	3
2.05	“Association of securities firms”	4
2.06	“Beneficial ownership”	4
2.07	“Broker”	4
2.08	“By-law”	4
2.09	“Call”	4
2.10	“Clearing agency”	4
2.11	“Commission”	5
2.12	“Control”	5
2.13	“Corporation”	5
2.14	“Dealer”	5
2.15	“Deception”	5
2.16	“Director”	5
2.17	“Distribution”	6
2.18	“Equity security”	6
2.19	“Expert”	6
2.20	“Filing”	7
2.21	“Issuer”	7
2.22	“Material fact”	7
2.23	“Minister”	7
2.24	“Misrepresentation”	7
2.25	“Mutual fund”	8
2.26	“Officer”	8
2.27	“Order”	8
2.28	“Participant”	8
2.29	“Person”	9
2.30	“Prescribed”	9
2.31	“Public information”	9
2.32	“Purchase”	9
2.33	“Put”	9
2.34	“Records”	9
2.35	“Registrant”	10
2.36	“Regulated financial institution”	10
2.37	“Regulation”	10
2.38	“Reporting issuer”	10
2.39	“Right to acquire a security”	10
2.40	“Sale”	10
2.41	“Salesman”	11
2.42	“Securities exchange”	11
2.43	“Securities firm”	11
2.44	“Securities register”	11

SECTION	DRAFT ACT
2.45 “Security”	11
2.46 “Self-regulatory organization”	12
2.47 “Subsidiary”	13
2.48 “Trade”	13
2.49 “Underwriter”	13
 Part 3: Exemptions	
3.01 Exemptions from the Act	15
3.02 Exemptions from disclosure	15
3.03 Exemptions by Commission	16
3.04 Denial of exemptions	17
 Part 4: Registration of Issuers	
4.01 Definitions: “board lot” and “public securityholder”	19
4.02 Registration of issuers	19
4.03 Commission power to require registration	19
4.04 Amendment of registration statement	20
4.05 Deregistration	20
 Part 5: Distributions	
5.01 “Block distribution circular”	21
5.02 Prospectus required	21
5.03 Offers to sell a security during distribution	21
5.04 Delivery of prospectus	21
5.05 Contents of prospectus	22
5.06 Preliminary prospectus	22
5.07 Commission order to supply information	23
5.08 Maximum length of distribution	23
5.09 Prospectus clearance	23
5.10 Effect of provincial clearance	24
5.11 Commencement of distribution within ninety days	25
5.12 Amendment of prospectus	25
5.13 Advertisements	25
5.14 Securities exchange distributions	25
5.15 Purchaser’s withdrawal right	25
 Part 6: Exemptions from Prospectus Requirements	
6.01 Trading exemptions	27
6.02 Exempt institutions and sophisticated purchasers	28
6.03 Limited offering	29
6.04 Trading transaction	30
6.05 Intraprovincial distribution	31
 Part 7: Reporting Issuer Disclosure	
A. <i>Continuous Disclosure</i>	
7.01 Annual report	33

SECTION	DRAFT ACT
7.02 Quarterly reports	33
7.03 Timely disclosure	33
B. <i>Proxy Solicitation</i>	
7.04 Definitions	34
7.05 Mandatory solicitation	35
7.06 Proxy circulars	35
7.07 Validity of proxy	35
7.08 Duty to attend meeting	35
7.09 Voting by registrant	36
7.10 Exempt solicitations	36
C. <i>Insider Reporting</i>	
7.11 Definitions	36
7.12 First insider report	37
7.13 Accelerated insider report	38
7.14 Subsequent insider reports	38
7.15 Nominee report	38
7.16 Integrated insider reports	39
7.17 Small trade exemption	39
7.18 Filings from other jurisdictions	39
D. <i>Takeover Bids</i>	
7.19 Definitions	39
7.20 Bid for all securities of class	40
7.21 Bid for less than all securities of class	40
7.22 Every bid	41
7.23 Arrangements for funds in cash bid	42
7.24 Sending bid	42
7.25 Directors' circular	42
Part 8: Market Actors	
8.01 Registration of market actors	45
8.02 Standards for registration and disciplinary measures	45
8.03 Effect of provincial registration	46
8.04 Notice of changes	47
8.05 Records and filings	47
8.06 Exemptions	47
8.07 Intraprovincial business	49
Part 9: Self-Regulatory Organizations	
9.01 Registration of self-regulatory organizations	51
9.02 Application and standards for registration	51
9.03 By-laws of self-regulatory organizations	52
9.04 Mandatory registration: transition	53
9.05 Commission power to delegate regulatory powers	53
9.06 Amendments to by-laws	54
9.07 Commission power to change by-laws	55
9.08 Commission oversight of fixed fees	55

SECTION

DRAFT ACT

9.09	Standards and procedures for membership, entry and discipline	55
9.10	Commission review of entry and disciplinary decisions	57
9.11	Audit of self-regulatory organization and its members.....	58
9.12	Commission's right to enter and inspect records	58
9.13	Contingency fund	59
9.14	Commission disciplinary powers	60

Part 10: Clearance, Settlement and Transfer Systems

10.01	Purpose of Part	61
10.02	Definitions	61
10.03	Issue of a security to a clearing agency.....	61
10.04	Transfer of a security to a clearing agency.....	62
10.05	Transfer of a security by record entry.....	63
10.06	Blocked account	63
10.07	Pledge of a security by record entry	63
10.08	Customer's blocked account	64
10.09	Conditional blocked account	64
10.10	Execution creditor's blocked account	64
10.11	Rights of a clearing agency as a registered owner	65
10.12	Limitation on rights of a participant	65
10.13	Withdrawal of security from clearing agency	65
10.14	Issuer's duty to request list of participants and beneficial owners...	66
10.15	Access to records of clearing agency	67
10.16	Liability of clearing agency	68
10.17	Application to rectify records	68
10.18	Participation by financial institutions	68

Part 11: Market Conduct and Regulation

11.01	Duty of registrant to make suitable recommendation	71
11.02	Registrant's conflicts of interest	71
11.03	Disclosure of registrant's interest in recommendations	71
11.04	Disclosure of registrant's policies on payment of commissions.....	71
11.05	Duty of registrant to forward documents to beneficial owner of securities	72
11.06	Confirmation of trade	72
11.07	Duty of securities exchange to keep record of trades	72
11.08	Disclosure by registrant of other party to trade	73
11.09	Prohibition of calls at a residence	73
11.10	Commission oversight of advertisements.....	73
11.11	Declaration of short sales	73
11.12	Standards for nonmember registrants.....	74
11.13	Reporting of lost and stolen securities	74

Part 12: Fraud and Manipulation

12.01	Deception and misrepresentation in connection with trading and disclosure	75
12.02	Insider trading	75

SECTION	DRAFT ACT
12.03 Speculation by insiders	76
12.04 Prohibited representations	76
12.05 Touting	77
12.06 Wash trading	77
12.07 Manipulation by trading	78
12.08 Short tendering in takeover bids	78
12.09 Gaming in securities (“bucketing”)	79
12.10 Churning	79
12.11 Manipulation in distribution and stabilization	79

Part 13: Civil Liability

13.01 Definitions: direct and impersonal trades and “rescission”	81
13.02 Failure to file prospectus	81
13.03 Insider trading in direct trade	82
13.04 Impersonal trades: deception, insider trading and tipping	82
13.05 False prospectus	83
13.06 False takeover bid circular	85
13.07 False registration statement	87
13.08 False directors’ circular	88
13.09 False filing and false press release	89
13.10 Market manipulation	90
13.11 Violation of proxy requirements	90
13.12 Violation of accelerated reporting and takeover bid requirements ..	91
13.13 Churning	92
13.14 Improper market conduct	92
13.15 Failure of issuer to provide information to secondary distributor ..	92
13.16 Implied cause of action for violation	92
13.17 Aiding and abetting and failure to supervise	93
13.18 Joint and several liability and contribution	93
13.19 Limitation periods	93
13.20 Rescission offer	94

Part 14: Enforcement

14.01 Fact-finding investigations	97
14.02 Policy inquiry	99
14.03 Examination of registrant’s affairs	99
14.04 Cease trading orders by Commission	100
14.05 Freeze order by Commission	101
14.06 Compliance order by court	102
14.07 Court appointment of receiver	102
14.08 “Derivative” and substitute actions and intervention by Commission	103
14.09 Court powers to grant ancillary remedies	103
14.10 Criminal offences and penalties	104
14.11 Secondary criminal liability	105

Part 15: Administration

15.01	Canadian Securities Commission	107
15.02	Duties of Chairman and Vice-Chairman	107
15.03	Qualifications of commissioners: conflicts of interest	108
15.04	Remuneration of commissioners	108
15.05	Appointment of officers and employees	109
15.06	Agreements with provinces: interdelegation	109
15.07	Participation of provincial officials in Commission proceedings	109
15.08	Commission control of litigation	110
15.09	Commission power to delegate functions	110
15.10	Commission power to appoint experts	110
15.11	Annual report of Commission	110
15.12	Cooperation with provincial commissions and other regulatory agencies	112
15.13	Procedural rules of Commission	112
15.14	Power to enact regulations	113
15.15	Procedure for making regulations	114
15.16	Commission orders	115
15.17	Procedure for making orders	116
15.18	Commission review of orders made by delegates and self-regulatory organizations	117
15.19	Judicial review of Commission orders	118
15.20	Judicial review of regulations	119
15.21	Exclusivity of review under sections 15.19 and 15.20	120
15.22	Immunity of commissioners and employees from civil liability	120
15.23	Misuse of official information	120
15.24	Refund of fees	121
15.25	Commission appropriation	121

Part 16: General

16.01	Application of Act: territorial	123
16.02	Application of Act: including extraterritorial	123
16.03	Consent to jurisdiction and service	124
16.04	Deposit of security by nonresident	124
16.05	Jurisdiction of courts and venue	124
16.06	Personal jurisdiction: service of process	126
16.07	Filing of documents	126
16.08	Availability to public of filings	126
16.09	Admissibility in evidence of Commission certificate	127
16.10	Defamation in filings: privilege	127
16.11	Immunity of employees of a self-regulatory organization from damages	128
16.12	Destruction of required records	128
16.13	Determination of securityholders	128
16.14	Receipt of mailed documents	128
16.15	Application to Crown	128
16.16	Interpretation of Act: legislative history and treaties	129
16.17	Severability of provisions	129
16.18	Effective date of Act	129

PART 1

TITLE AND POLICY OF ACT

1.01 This Act may be cited as the *Canada Securities Market* Short title *Act*.

SOURCES: Canada Business Corporations Act, s. 1; Ontario Securities Act, 1978, s. 144.

1.02 It is hereby declared that

(a) the efficient functioning of the capital market will facilitate the exploitation of natural resources in Canada, the development of Canadian industry and, generally, the economic well-being of Canada;

(b) the securities market should provide an effective means for the allocation of capital to the most efficient users in order to meet the capital demands in Canada;

(c) an efficient trading market is essential to the allocational efficiency of the securities market and, therefore, to the Canadian economy;

(d) technical advances in communication which permit the linking of securities exchanges in Canada for purposes of trading securities, communicating information on securities trading and prices and for clearance and settlement of trades in securities are likely to increase the liquidity and the allocational efficiency of the Canadian securities market and to minimize the cost of transactions to investors;

(e) minimum national standards for trading and dissemination of information through such facilities are necessary to further and to ensure fair competition in the securities market;

(f) national enforcement mechanisms are necessary to detect, prevent and remedy fraudulent conduct, especially in light of the interprovincial and international character of modern securities markets and of fraudulent securities schemes which necessitate cooperation between Canadian law enforcement agencies and those of other nations;

(g) the confidence of investors in the honest, fair and efficient operation of the Canadian securities market and in the effectiveness of its regulation is essential to the attainment of a broadly based source of capital for

Securities
market policy
for Canada;
purpose of Act

Canadian industry and to the efficiency of the securities market generally;

and that the purpose of this Act is to further the achievement of the goals enunciated in this section by ensuring the availability of information relating to investment decisions, by protecting investors from fraudulent and deceptive conduct and by ensuring fair competition, all of which can best be accomplished by the creation of an independent public body to regulate the Canadian securities market and securities market actors over which the Parliament of Canada has legislative jurisdiction in cooperation with similar provincial and foreign public authorities.

SOURCES: National Transportation Act, R.S.C. 1970, c. N-17, s. 3; Telecommunications Act, s. 3; ALI Federal Securities Code, ss. 101, 1002.

PART 2

DEFINITIONS

2.01 “Advertisement” means

- (a) a written or printed communication,
- (b) a communication by means of a recorded telephone message, and
- (c) a communication by radio, television or other communications medium

“Advertisement”

that is published in connection with a trade in a security.

SOURCES: Ontario Securities Act, 1978, s. 49(2)(a); California Corporate Securities Law of 1968, s. 25002; Pennsylvania Securities Act, s. 102(a).

2.02 “Adviser” means a person who advises others as to the value of securities or as to investing in, purchasing or selling securities.

“Adviser”

SOURCES: Ontario Securities Act, s. 1(1); Ontario Securities Act, 1978, s. 1(1); ALI Federal Securities Code, s. 279(a).

2.03 An issuer is “affiliated” with another issuer if one of them is the subsidiary of the other or if each of them is controlled by the same person.

“Affiliate”

SOURCES: Canada Business Corporations Act, s. 2(2); Ontario Securities Act, s. 1(2); Ontario Securities Act, 1978, s. 1(2).

2.04 “Associate” when used to indicate a relationship with any person means

“Associate”

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, equity securities entitling him to more than ten percent of the voting rights attached to outstanding securities of the issuer,
- (b) a partner of the person acting on behalf of the partnership of which they are partners,
- (c) a trust or estate in which the person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity,
- (d) a spouse or child of the person, and
- (e) a relative of the person or of his spouse who has the same residence as the person.

SOURCES: Canada Business Corporations Act, s. 2(1); Ontario Securities Act, s. 1(1)2; Ontario Securities Act, 1978, s. 1(1)2.

"Association of securities firms"

2.05 "Association of securities firms" means an organization of securities firms that

- (a) supervises its members to ensure compliance with this Act or with similar legislation,
- (b) regulates conduct of its members or of any other person in the securities market, or
- (c) regulates entry of any person into or the prices for services in the securities market.

SOURCE: New; *cf.* ALI Federal Securities Code, s. 299.39.

"Beneficial ownership"

2.06 "Beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary.

SOURCE: Canada Business Corporations Act, s. 2(1).

"Broker"

2.07 "Broker" means a person who trades in securities as an agent.

SOURCES: Ontario Securities Regulations, s. 2(1)1; ALI Federal Securities Code, s. 217.

"By-law"

2.08 "By-law" means a regulation made by a self-regulatory organization under its constitution.

SOURCE: New.

"Call"

2.09 "Call" means an option transferable by delivery to demand delivery of a specified number or amount of securities at a fixed price within a specified time but does not include an option or right to acquire securities of the issuer or an affiliate of the issuer that granted the option or right to acquire.

SOURCE: Canada Business Corporations Act, s. 2(1).

"Clearing agency"

2.10 "Clearing agency" means a person that

- (a) maintains records of trades of securities for the purpose of settling claims for money and securities,
- (b) maintains records of transfers and pledges of securities for the purpose of determining ownership of or security interests in securities,
- (c) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry, or
- (d) performs any one or any combination of the functions referred to in paragraphs (a) to (c),

but does not include a securities firm or financial institution acting exclusively in the ordinary course of its customary

business unless the Commission provides otherwise by regulation.

SOURCE: ALI Federal Securities Code, s. 222.

2.11 “Commission” means the Canadian Securities Commission established pursuant to section 15.01. “Commission”

SOURCE: New.

2.12 An issuer is “controlled” by a person if

“Control”

- (a) equity securities of the issuer carrying more than fifty percent of the votes that may be cast to elect directors are held, other than by way of security only, by or for the benefit of the person, and
- (b) the votes carried by the securities are sufficient, if exercised, to elect a majority of the board of directors of the issuer.

SOURCES: Canada Business Corporations Act, s. 2(3); Ontario Securities Act, s. 1(3); Ontario Securities Act, 1978, s. 1(3).

2.13 “Corporation” means an incorporated person.

“Corporation”

SOURCES: Canada Business Corporations Act, s. 2(1) “body corporate”; Ontario Securities Act, s. 1(1)4; Ontario Securities Act, 1978, s. 1(1)4.

2.14 “Dealer” means a person who trades in securities as principal.

“Dealer”

SOURCES: Ontario Securities Act, s. 1(1)5; Ontario Securities Act, 1978, s. 1(1)7; ALI Federal Securities Code, s. 235.

2.15 “Deception” means

“Deception”

- (a) a failure to fulfil a duty
 - (i) to act, or
 - (ii) to disclose a material fact, and
- (b) an act, device, scheme, practice or course of conduct that is likely to have the effect of deceiving or misleading a person.

SOURCES: Criminal Code, s. 338; Newfoundland Securities Act, s. 2(c); Trade Practices Act, S.B.C. 1974, c. 96, s. 2(1); ALI Federal Securities Code, Tent. Draft No. 2, s. 225; ALI Federal Securities Code, s. 262.

2.16 “Director” means a director of a corporation or a natural person occupying a similar position or performing similar functions with respect to a corporation or any other person.

“Director”

SOURCES: Canada Business Corporations Act, s. 2(1); Ontario Securities Act, 1978, s. 1(1)10; ALI Federal Securities Code, s. 241.

“Distribution”

2.17 “Distribution”, where used in relation to trading in securities, means

- (a) a sale of a security by or on behalf of the issuer of the security, whether or not the security has been previously issued,
- (b) a sale of a previously issued security purchased from the issuer or an underwriter of the security, other than a security of a reporting issuer that was purchased by the seller one hundred and eighty days, or such other period as the Commission prescribes, before the sale,
- (c) a sale of a previously issued security from the holdings of a person or prescribed group of persons, if the aggregate holdings of securities of that class enable the person or group to exercise a determinative influence over the management and policies of the issuer in any manner, and
- (d) a sale of previously issued securities from the holdings of a sophisticated purchaser or prescribed group of persons, if the aggregate number of securities exceeds an amount prescribed by the Commission

and includes a trade involving a purchase and sale or repurchase and resale of a security in the course of, or incidental to, a distribution within paragraphs (a) to (d).

SOURCES: Ontario Securities Act, s. 1(1)6a; Ontario Securities Act, 1978, s. 1(1)11; ALI Federal Securities Code, s. 242.

“Equity security”

2.18 “Equity security” means a security carrying voting rights

- (a) under all circumstances, or
- (b) by reason of the occurrence of an event that has occurred and is continuing,

and includes a right, other than a call, to acquire such a security.

SOURCES: Canada Business Corporations Act, ss. 121(1), 187 “share”; Ontario Securities Act, s. 1(1)7; Ontario Securities Act, 1978, s. 1(1)44; ALI Federal Securities Code, s. 248.

“Expert”

2.19 “Expert” means a lawyer, engineer, accountant, appraiser or any other person whose profession or reputation gives authority to a statement made by him.

SOURCE: Corporations and Securities Industry Bill 1974 (Australia), s. 3.

2.20 “Filing” means a document or other thing filed with the Commission pursuant to a requirement of this Act other than a document or other thing delivered to the Commission pursuant to an investigation under section 14.01 or 14.02. ^{“Filing”}

SOURCE: ALI Federal Securities Code, s. 260.

2.21 “Issuer” means a person who has outstanding issues or proposes to issue a security. ^{“Issuer”}

SOURCES: Ontario Securities Act, 1978, s. 1(1)18; ALI Federal Securities Code, s. 286.

2.22 (1) “Material fact” means a fact to which a reasonable person would attach importance under the circumstances in determining his course of action. ^{“Material fact”}

(2) When a person communicates directly with another person, “material fact” includes a fact that is known by the person communicating it to be likely to be regarded as important by the person receiving it in determining his course of action, whether or not a reasonable person would so regard it.

(3) When a person communicates directly with another person, “material fact” does not include a fact that the person communicating information knows is not or is not likely to be regarded as important by the person receiving it in determining his course of action, whether or not a reasonable person would so regard it.

(4) A person who receives information has the burden of proving that a fact is material within subsection (2) and a person who conveys information has the burden of proving that a fact is not material within subsection (3).

SOURCES: Ontario Securities Act, 1978, ss. 1(1)21, 22; ALI Federal Securities Code, s. 293.

2.23 “Minister” means the member of the Queen’s Privy Council for Canada designated by the Governor in Council as the Minister for purposes of this Act. ^{“Minister”}

SOURCE: Canada Business Corporations Act, s. 2(1).

2.24 “Misrepresentation” means

^{“Misrepresentation”}

- (a) an untrue statement of a material fact, and
- (b) an omission to state a material fact necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made.

SOURCES: Criminal Code, s. 319 (false pretence); Ontario Securities Act, s. 137; Ontario Securities Act, 1978, ss. 1(1)24 and 118(1); ALI Federal Securities Code, s. 297(a).

“Mutual fund”

2.25 “Mutual fund” means an issuer of securities which carry a right of surrender at the option of the holder and in respect of which the holder is entitled to receive on or after surrender an amount determined by reference to the proportionate interest represented by the security in the net assets of the issuer.

SOURCES: 1 Mutual Fund Proposals, s. 1.01(1) “mutual fund”, “mutual fund share”; Ontario Securities Act, 1978, s. 1(1)25.

“Officer”

2.26 “Officer” means

- (a) the chairman or a vice-chairman of the board of directors, the president, a vice-president, the treasurer, secretary, comptroller, general counsel, general manager, or principal executive, financial or accounting officer of a person,
- (b) any other natural person who performs functions for the person similar to those normally performed by a person occupying an office specified in paragraph (a), and
- (c) each of the five highest paid employees of the person including a person mentioned in paragraphs (a) and (b).

SOURCES: Canada Business Corporations Act, s. 121(1); Ontario Securities Act, ss. 1(1)11, 1(1)23; Ontario Securities Act, 1978, ss. 1(1)27, 1(1)41; ALI Federal Securities Code, s. 299.15.

“Order”

2.27 “Order” means a decision of the Commission under this Act or of a self-regulatory organization in relation to any matter other than the making of a regulation or the adoption of a policy statement.

SOURCES: Federal Court Act, s. 2 “final judgment”; Ontario Securities Act, 1978, s. 1(1)8; Administrative Procedure Act, 5 U.S.C. s. 551(6); ALI Federal Securities Code, s. 298.18.

“Participant”

2.28 “Participant” means a person who receives services from a clearing agency other than exclusively

- (a) through another person who is a participant, or
- (b) as a pledgee, judgment creditor or beneficial owner for whom a blocked account has been established.

SOURCE: ALI Federal Securities Code, ss. 223, 299.21.

2.29 “Person” means

“Person”

- (a) a natural person, partnership, association, joint-stock company, trust, fund, corporation or other organized group of persons,
- (b) a trustee, executor, receiver, liquidator, administrator or other legal representative, and
- (c) a government, political subdivision of a government or municipality.

SOURCES: Canada Business Corporations Act, s. 2(1); Ontario Securities Act, s. 1(1)12; Ontario Securities Act, 1978, s. 1(1)28; ALI Federal Securities Code, ss. 228, 299.24.

2.30 “Prescribed” means prescribed by regulations made “Prescribed” under this Act.

SOURCES: Canada Business Corporations Act, s. 2(1); Statutory Instruments Act, S.C. 1970-71-72, c. 38, s. 2(1)(a).

2.31 A fact becomes “public” when it is disclosed

“Public information”

- (a) in a filing,
- (b) by means of a press release, or
- (c) by means of another form of publicity that is likely to bring it to the attention of a reasonable investor,

and a reasonable time for it to be generally disseminated to investors or such time as the Commission prescribes has expired.

SOURCE: ALI Federal Securities Code, s. 265.

2.32 “Purchase” means a purchase or acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment, or otherwise, and includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a purchase or acquisition. “Purchase”

SOURCES: Ontario Securities Act, s. 1(1)24; Ontario Securities Act, 1978, s. 1(1)42; ALI Federal Securities Code, ss. 299.12, 299.32.

2.33 “Put” means an option transferable by delivery to “Put” deliver a specified number or amount of securities at a fixed price within a specified time.

SOURCE: Canada Business Corporations Act, s. 2(1).

2.34 “Records” means accounts, correspondence, memoranda and any other data or information relating to the property or affairs of a person, including data or information prepared or maintained in a bound or looseleaf form or in a photographic “Records”

film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

SOURCES: Bankruptcy Act, 1978, Bill S-11, 30th Parl., 3d Sess., s. 2(1) (First reading March 21, 1978); ALI Federal Securities Code, s. 299.35.

“Registrant”

2.35 “Registrant” means a person registered under this Act.

SOURCES: Ontario Securities Act, s. 1(1)19; Ontario Securities Act, 1978, s. 1(1)36.

“Regulated financial institution”

2.36 “Regulated financial institution” means a financial institution the securities of which are exempted under paragraph 3.02(1)(c).

SOURCE: New; *cf.* ALI Federal Securities Code, s. 275.

“Regulation”

2.37 “Regulation” includes a rule, a form and instructions to a form.

SOURCES: Interpretation Act, s. 2(1) “regulation”; Statutory Instruments Act, S.C. 1970-71-72, c. 38, s. 2(1)(b); Ontario Securities Act, s. 1(1)20; Ontario Securities Act, 1978, s. 1(1)37; ALI Federal Securities Code, s. 299.45.

“Reporting issuer”

2.38 “Reporting issuer” means an issuer that has filed a registration statement under Part 4 and that has not been the subject of a Commission order altering its status as a reporting issuer.

SOURCES: Ontario Securities Act, 1978, s. 1(1)38; ALI Federal Securities Code, s. 299.40.

“Right to acquire a security”

2.39 “Right to acquire a security” means

- (a) a security currently convertible into another security,
- (b) a security carrying a warrant or right to acquire another security, or
- (c) a currently exercisable option, warrant or right to acquire another security or a security specified in paragraph (a) or (b).

SOURCES: New; *cf.* Canada Business Corporations Act, ss. 121(1), 187 “share”; ALI Federal Securities Code, s. 248.

“Sale”

2.40 “Sale” means a sale or disposition of a security for valuable consideration, whether the terms of payments are on margin, instalment or otherwise, and includes any act, adver-

tisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.

SOURCES: Ontario Securities Act, s. 1(1)24; Ontario Securities Act, 1978, s. 1(1)42; ALI Federal Securities Code, s. 299.46.

2.41 “Salesman” means a natural person employed by a broker or dealer to trade in securities on his behalf. “Salesman”

SOURCES: Ontario Securities Act, s. 1(1)21; Ontario Securities Act, 1978, s. 1(1)39.

2.42 “Securities exchange” means a person that maintains or provides “Securities exchange”

- (a) physical facilities where persons may meet to execute trades in securities, or
- (b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale.

SOURCE: ALI Federal Securities Code, s. 250.

2.43 “Securities firm” means a person who carries on a business of trading in securities and, without limiting the generality of the foregoing, includes a person who carries on business as “Securities firm”

- (a) a broker or dealer,
- (b) an underwriter,
- (c) an adviser, or
- (d) any one or any combination of the foregoing.

SOURCE: New; *cf.* Bankruptcy Act, 1978, Bill S-11, 30th Parl., 3d Sess., s. 315(1) (First reading March 21, 1978).

2.44 “Securities register” means a record maintained by or on behalf of an issuer in which the securities issued by it are recorded in registered form showing with respect to each class or series of securities “Securities register”

- (a) the name and address of each securityholder of the issuer,
- (b) the number of securities held by each securityholder, and
- (c) the date and particulars of the issue and transfer of each security.

SOURCE: Canada Business Corporations Act, s. 46(1).

2.45 “Security” means a “Security”

- (a) (i) bond, debenture, note or other evidence of indebtedness,

- (ii) share, stock, unit, unit certificate, participation certificate or certificate of share or interest,
- (iii) preorganization certificate or subscription,
- (iv) agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, or
- (v) interest or instrument commonly known as a security,
- (b) interest or document constituting evidence of an interest or participation in
 - (i) a profit-sharing agreement,
 - (ii) a trust, estate or association, or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right,
- (c) voting trust certificate,
- (d) collateral trust certificate,
- (e) equipment trust certificate,
- (f) investment contract, and
- (g) right to acquire or sell a security specified in paragraphs (a) to (f),

whether any of the foregoing relates to a person or a proposed person but does not include

- (h) currency,
- (i) a cheque, bill of exchange or bank letter of credit,
- (j) a deposit account with
 - (i) a bank,
 - (ii) a credit union within the meaning of paragraph 137(6)(b) of the *Income Tax Act*, or
 - (iii) another deposit-taking institution that is a member institution under the *Canada Deposit Insurance Corporations Act* or any of the deposits with which are insured or guaranteed under a provincial enactment that provides depositors with protection against the loss of monies on deposit with financial institutions, or
- (k) an insurance policy or a fixed income or fixed annuity contract issued by an insurance corporation.

SOURCES: Ontario Securities Act, s. 1(1)22; Ontario Securities Act, 1978, s. 1(1)40; ALI Federal Securities Code, s. 299.53.

“Self-regulatory organization”

2.46 “Self-regulatory organization” means an association of securities firms, a clearing agency and a securities exchange.

SOURCE: ALI Federal Securities Code, s. 299.54.

2.47 “Subsidiary” means an issuer that is controlled by another issuer. “Subsidiary”

SOURCES: Canada Business Corporations Act, s. 2(5); Ontario Securities Act, s. 1(4); Ontario Securities Act, 1978, s. 1(4).

2.48 “Trade” means

“Trade”

- (a) a sale,
- (b) a purchase, and
- (c) participation as a floor or professional trader in any transaction in a security through the facilities of a securities exchange.

SOURCES: Ontario Securities Act, s. 1(1)24; Ontario Securities Act, 1978, s. 1(1)42.

2.49 “Underwriter” means a person who,

“Underwriter”

- (a) as principal, purchases, or
- (b) as agent, sells

securities in furtherance of a distribution and includes a person who participates directly or indirectly in any such distribution, other than

- (c) a person whose interest in the distribution is limited to receiving the usual and customary distributor’s or seller’s discount or commission payable by an underwriter,
- (d) a person whose interest in the distribution is limited to receiving the usual and customary broker’s commission or dealer’s discount, or
- (e) an issuer that purchases securities of its own issue and resells them.

SOURCES: Ontario Securities Act, s. 1(1)25; Ontario Securities Act, 1978, s. 1(1)43; ALI Federal Securities Code, s. 299.74.

PART 3**EXEMPTIONS**

3.01 Subject to section 3.04 and to Part 14, this Act does not apply to

- (a) a negotiable promissory note or commercial paper maturing not more than one year from the date of issue if the note or commercial paper has a denomination or principal amount of at least \$50,000 or a greater amount prescribed by the Commission; Exemptions from the Act
money market instruments
- (b) a promissory note or other evidence of indebtedness issued in a mercantile or consumer transaction, including without limiting the foregoing a security evidencing indebtedness due under a conditional sales contract or other title retention contract providing for the acquisition of personal property, if the security is not sold to a person other than a financial institution; consumer paper
- (c) a receipt or trust certificate issued by a bank or other deposit-taking institution referred to in paragraph 2.45(j) for money received; savings certificates
- (d) a mortgage or other encumbrance on real or personal property, other than one contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds, debentures or similar obligations, if the mortgage or other encumbrance is not sold in prescribed circumstances; or mortgages
- (e) a security of an issuer, other than a reporting issuer, where the total number of securityholders of the issuer, excluding employees, is less than fifty. "private company"

SOURCES: Ontario Securities Act, ss. 19(2)2-5 and 9, 58(2)(a); Ontario Securities Act, 1978, ss. 34(2)2-6 and 10, 72(1)(a); ALI Federal Securities Code, ss. 299.53(b)(3) and (5), 302(d), (g) and (k).

3.02 (1) Part 5 does not apply to a distribution of

- (a) bonds, debentures or other instruments evidencing indebtedness of or guaranteed by the Government of Canada, a province of Canada or a municipal corporation in Canada; Exemptions from disclosure
government bonds
- (b) bonds, debentures or other instruments evidencing indebtedness of or guaranteed by an international financial institution of which Canada is a member, if bonds of international financial institutions

securities of
regulated
financial
institution

tax deferred and
pension plans

securities of
nonprofit
organizations

securities of
cooperatives and
credit unions

exemption from
Part 4

declaratory
order

the securities are payable in the currency of Canada or the United States of America;

(c) securities issued or guaranteed by

- (i) a bank,
- (ii) an insurance, trust or loan corporation,
- (iii) an investment contract corporation,
- (iv) a mutual fund, or
- (v) another financial institution that is regulated by a federal or provincial government agency pursuant to an act that requires substantially similar disclosure by the institution in connection with a distribution and on a continuing basis to that required of an issuer under this Act;

(d) securities issued by a bank, insurance corporation, trust corporation, loan corporation or other financial institution in respect of an account maintained solely to service a pension, housing or other savings plan registered under the *Income Tax Act* or under the *Pension Benefits Standards Act* or similar provincial legislation;

(e) securities issued by a person organized and operated exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes or as a chamber of commerce or trade or professional association, if

- (i) no part of its net earnings enures to the benefit of a securityholder or other person, and
- (ii) no person receives a commission or other remuneration in connection with its organization or the sale of the securities; or

(f) equity securities issued by a cooperative corporation referred to in subsection 136(2) of the *Income Tax Act* or by a credit union referred to in paragraph 137(6)(b) of the *Income Tax Act*.

(2) Part 4 does not apply to an issuer in respect of a security specified in subsection (1).

(3) The Commission may, for the purposes of paragraph (1) (c), specify by order or regulation an act that requires substantially similar disclosure to that required of an issuer under this Act.

SOURCES: Ontario Securities Act, ss. 19(2)1, 6, 7 and 8, 58(2)(a); Ontario Securities Act, 1978, ss. 34(2)1, 7, 8 and 9, 72(1)(a); ALI Federal Securities Code, ss. 299.9, 302.

3.03 The Commission may by regulation or order exempt a person, a security or a trade from any provision of this Act

Commission
exemptions

subject to any conditions that it considers appropriate and a regulation or order under this section may have retrospective effect.

SOURCES: Canada Business Corporations Act, ss. 2(8), 122(8), 145(1), 150, 154(3), 197; Ontario Securities Act, ss. 18(e), 19(1)(1), 19(2)(13), 20, 58(2)(d), 59, 90, 104(2), 116, 132, 147(i), (n) and (p); Ontario Securities Act, 1978, ss. 32(4), 33(e), 34(1)(23), 34(2)(15), 72(1)(d), 73, 79, 87(2), 99(e), 117(2), 139.2, 17, 19, 23 and 32; ALI Federal Securities Code, ss. 303, 802(a)(2), 906(c), 1004(b), 1007(b), 1422(b), 1905(c)(1).

3.04 (1) Where the Commission believes that it is necessary in the public interest or for the protection of investors, it may by regulation or order deny an exemption under this Act subject to any conditions it considers appropriate.

Denial of
exemptions

(2) The Commission may make an order under subsection (1) without holding a hearing as required by section 15.17 but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed.

summary denial

SOURCES: Ontario Securities Act, ss. 19(5)-(7), 147(o); Ontario Securities Act, 1978, ss. 124, 139.18.

PART 4

REGISTRATION OF ISSUERS

4.01 In this Part

- (a) “board lot” means the number of securities that constitute a trading unit pursuant to the by-laws of a registered stock exchange, and
- (b) “public securityholder” means a person resident in Canada who is the holder of at least one board lot of an equity security of an issuer, other than
 - (i) a director or officer of the issuer,
 - (ii) an affiliate of the issuer,
 - (iii) a person who beneficially owns more than ten percent of the equity securities of the issuer or who exercises control or direction over more than ten percent of the votes attached to the securities of the issuer,
 - (iv) an employee of the issuer,
 - (v) an associate of a person specified in subparagraphs (i) to (iii), and
 - (vi) any other person prescribed by the Commission.

Definitions:

“board lot”

“public securityholder”

SOURCE: New.

4.02 (1) An issuer that has three hundred or more public securityholders or a class of securities listed on a registered securities exchange shall file with the Commission a registration statement in prescribed form within ninety days after the end of the first financial year in which it meets the requirements of this subsection.

Reporting issuers

(2) An issuer that is not subject to subsection (1) may apply to the Commission for an order permitting it to become a reporting issuer and the Commission may by order grant the application on such conditions as it considers appropriate.

voluntary registration

SOURCE: ALI Federal Securities Code, s. 402.

4.03 The Commission may, by order, require an issuer with three hundred or more securityholders to file a registration statement pursuant to section 4.02 if

Commission power to require registration

- (a) an active trading market exists in a class of securities of the issuer, or
- (b) the protection of investors in or outside Canada requires such action.

SOURCE: New.

Amendment
time

4.04 (1) A reporting issuer shall amend its registration statement annually so that the information contained therein is current as of the end of its most recent financial year.

(2) An issuer shall amend its registration statement pursuant to subsection (1) within ninety days after the end of its financial year.

(3) An issuer may include in its registration statement any information that is not of a type prohibited by regulation.

SOURCE: New.

Deregistration

4.05 Where a reporting issuer has fewer than one hundred public securityholders, the Commission may on its own motion or on application by the issuer or another interested person declare, by order, subject to such conditions as it considers appropriate, that the issuer is no longer required to comply with section 4.04 and is no longer a reporting issuer.

SOURCE: ALI Federal Securities Code, s. 406.

PART 5

DISTRIBUTIONS

5.01 In this Part “block distribution circular” means a prospectus required in connection with a distribution referred to in paragraph 2.17(d).

“Block distribution circular”

SOURCE: New.

5.02 Subject to section 5.03, no person shall distribute a security unless a prospectus or a block distribution circular has been filed with and a receipt therefor has been issued by the Commission.

Prospectus required

SOURCES: Ontario Securities Act, s. 35; Ontario Securities Act, 1978, s. 52; ALI Federal Securities Code, s. 502.

5.03 (1) No person shall offer to sell a security in connection with a distribution unless the offer is made by means of

Offers to sell a security during distribution

- (a) a prospectus or block distribution circular for which a receipt has been issued by the Commission,
- (b) a summary prospectus relating to a prospectus specified in paragraph (a),
- (c) a preliminary prospectus, or
- (d) an advertisement
 - (i) identifying the security distributed, a person from whom a document specified in paragraphs (a) to (c) may be obtained, and a person through whom orders will be executed, and
 - (ii) containing whatever other information the Commission permits or requires by regulation.

(2) Notwithstanding subsection (1), a registrant may solicit expressions of interest from prospective purchasers with respect to a proposed distribution if he notifies the Commission in writing that he intends to do so and identifies the issuer and the security proposed to be distributed.

registrants

(3) In this section “offer to sell” includes an attempt or offer to dispose of and a solicitation of an offer to buy a security.

“offer to sell”

SOURCES: Ontario Securities Act, s. 36; Ontario Securities Act, 1978, s. 64; ALI Federal Securities Code, ss. 299.46(b), 503.

5.04 (1) No registrant shall sell a security of a class that is the subject of a filing pursuant to section 5.02 or section 5.14 and for which a receipt has been issued by the Commission

Delivery of prospectus

within ninety days of the date of the receipt unless he sends or delivers to the purchaser of the security a prospectus or block distribution circular within two business days after the agreement of sale is made.

reporting issuers (2) The Commission may by regulation reduce the period specified in subsection (1) with respect to reporting issuers.

duty to furnish copies (3) A person who files a prospectus or block distribution circular pursuant to section 5.02 or section 5.14 shall during the period specified in subsection (1) upon request furnish to a registrant a reasonable number of copies of it without charge.

receipt by agent (4) For the purposes of this section the receipt of a prospectus or block distribution circular by a person who acts solely as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) is receipt by the purchaser as of the date on which the agent received the prospectus or block distribution circular.

SOURCES: Ontario Securities Act, ss. 64(1), (7); Ontario Securities Act, 1978, ss. 70(1), (6), (7); ALI Federal Securities Code, ss. 504, 505(c), 512(b), (c).

Contents of prospectus **5.05** (1) A prospectus and a block distribution circular shall contain the information prescribed by the Commission and may contain any other information that is not of a type prohibited by regulation.

reporting issuers (2) The Commission shall pursuant to subsection (1) adopt regulations applicable to reporting issuers that are designed to avoid unnecessary repetition of information previously filed by the issuer.

summary prospectus (3) A summary prospectus may omit in part or summarize information contained in a prospectus and shall be identified in a manner and contain the information prescribed by the Commission.

prospectus summary (4) The Commission may by regulation require that a prospectus or block distribution circular contain an introductory summary of its contents.

SOURCES: Ontario Securities Act, ss. 41-53; Ontario Securities Act, 1978, ss. 55, 57-59; ALI Federal Securities Code, s. 505.

Preliminary prospectus **5.06** (1) A preliminary prospectus shall contain the information prescribed for a prospectus pursuant to subsection 5.05(1) but it may omit

(a) the price at which the security is offered, the price to or commission of the underwriter and other information relating to these matters,

(b) a required report of an auditor or accountant, and
 (c) any other information prescribed by the Commission.

(2) A preliminary prospectus shall not be used after a receipt is issued under section 5.02 for the prospectus in connection with the distribution to which it relates. termination of use

(3) A preliminary prospectus is not a prospectus for purposes of civil liability under Part 13. civil liability

SOURCES: Ontario Securities Act, s. 38; Ontario Securities Act, 1978, s. 53; ALI Federal Securities Code, s. 505(b).

5.07 Where a person proposes to make a distribution referred to in paragraph 2.17(c) or (d) and is unable to obtain information required to be included in a prospectus or block distribution circular, the Commission may order the issuer of the securities to be distributed to furnish to the person the information that the Commission considers necessary subject to such conditions as it considers appropriate. Commission order to supply information

SOURCES: Ontario Securities Act, s. 60; Ontario Securities Act, 1978, s. 63; ALI Federal Securities Code, s. 502(b).

5.08 (1) A distribution of a security shall not continue longer than one year and twenty days from the date of the receipt for the prospectus or block distribution circular relating to it unless the Commission issues a new receipt for a current prospectus or block distribution circular in which case the period runs from the date of the latter receipt. Maximum length of distribution

(2) The Commission may by regulation or order reduce the period specified in subsection (1) to six months. reduction of period

SOURCES: Ontario Securities Act, s. 56; Ontario Securities Act, 1978, s. 61; ALI Federal Securities Code, s. 508(a)(2).

5.09 (1) Subject to subsections (2), (3) and (4), the Commission shall issue a receipt for a prospectus or block distribution circular within a reasonable time after it is filed with it pursuant to section 5.02 or section 5.14. Prospectus clearance

(2) The Commission may by order refuse to issue a receipt for a prospectus if "blue sky" discretion

- (a) the prospectus
 - (i) contains a misrepresentation, or
 - (ii) fails to disclose a material fact required under this Part,
- (b) the distribution in connection with which it is filed is deceptive,

- (c) an unconscionable consideration has been or is intended to be given for promotional purposes or for the acquisition of property,
- (d) the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus,
- (e) the past conduct of the issuer or of a person who in any manner exercises a determinative influence over its management and policies indicates that the business of the issuer is likely to be conducted in a manner that is not honest or financially responsible or that is unfair to its securityholders,
- (f) an expert who has prepared or certified a part of the prospectus or a report used in connection with it is not acceptable to the Commission, or
- (g) it considers for any other reason that the distribution is not fair, just and equitable.

block distribution circular

(3) The Commission may by order refuse to issue a receipt for a block distribution circular in the circumstances specified in paragraph (2)(a), (b), (f) or (g).

conditions

(4) The Commission may by regulation or order impose on a distribution in connection with which it issues a receipt for a prospectus or block distribution circular any condition that it considers necessary for the protection of investors including, without limiting the generality of the foregoing,

- (a) a condition that outstanding securities of the issuer be escrowed on terms specified by it,
- (b) a condition that the proceeds of a distribution payable to the issuer be held in trust until a specified amount is received for the issuer, and
- (c) a condition that no sales pursuant to the distribution may be completed before a time specified by it or that the period under subsection 5.15(2) during which a purchaser is not bound be extended for a time specified by it.

SOURCES: Ontario Securities Act, s. 61; Ontario Securities Act, 1978, s. 60; California Corporate Securities Law of 1968, s. 25140; ALI Federal Securities Code, s. 506.

Provincial clearance

5.10 The Commission shall issue a receipt for a prospectus for which a receipt or an equivalent certificate or permission has been issued by a provincial securities commission or other person responsible for the administration of the securities act in force in a province but may, by order, impose a condition limiting the distribution to that province.

SOURCE: New.

5.11 (1) If a distribution of securities does not commence within ninety days of the date on which a receipt for the prospectus or block distribution circular is issued by the Commission, the distribution shall cease until a new prospectus or block distribution circular has been filed with and a receipt therefor issued by the Commission.

Commencement
within ninety
days

(2) For the purposes of this section a distribution commences when twenty-five percent of the securities proposed to be distributed are sold and paid for.

minimum
subscription

SOURCE: ALI Federal Securities Code, s. 507(c).

5.12 If a material fact that relates to an issuer or to a security being distributed occurs while a distribution is in progress, an amendment to the prospectus shall be filed forthwith with the Commission and every prospectus thereafter sent or delivered to any person shall include the amendment.

Amendment of
prospectus

SOURCES: Ontario Securities Act, s. 55; Ontario Securities Act, 1978, s. 56; ALI Federal Securities Code, s. 508(a)(1).

5.13 The Commission may, by order or regulation, specify the type of advertisement or other information that may be published in connection with a distribution and may require it to be filed.

Advertisements

SOURCES: Ontario Securities Act, s. 57; Ontario Securities Act, 1978, s. 68; ALI Federal Securities Code, s. 503(c).

5.14 (1) Section 5.02 does not apply to a distribution of securities made through the facilities of a registered securities exchange in accordance with its by-laws if a statement of material facts is filed with and a receipt therefor issued by the exchange and the Commission.

Securities
exchange
distributions

(2) For the purposes of this Act, a statement of material facts referred to in subsection (1) is a prospectus.

statement of
material facts

SOURCES: Ontario Securities Act, s. 58(2)(b); Ontario Securities Act, 1978, s. 72(1)(b).

5.15 (1) A person, other than an agent of the purchaser, who receives an order to purchase a security in a distribution for which a prospectus or block distribution circular has been filed pursuant to section 5.02 or section 5.14 shall send or deliver to the purchaser the prospectus or block distribution circular relating to the distribution not later than midnight on the second business day after the agreement of purchase and sale is made.

Purchaser's
withdrawal
right: prospectus
delivery

method of withdrawal

(2) An agreement referred to in subsection (1) is not binding on the purchaser if the person from whom he purchased the security receives not later than midnight on the second business day after the purchaser receives the prospectus or block distribution circular written or telegraphic notice that the purchaser intends not to be bound by the agreement.

receipt by agent

(3) For the purposes of this section

- (a) the receipt of a prospectus or block distribution circular by a person who acts solely as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) is receipt by the purchaser as of the date on which the agent receives the prospectus or block distribution circular, and
- (b) the receipt of a notice referred to in subsection (2) by a person who acted as agent of the seller with respect to the sale of a security referred to in subsection (1) is receipt by the seller as of the date on which the agent receives the notice.

burden of proof

(4) A person who sells a security referred to in subsection (1) has the burden of proving that the period specified in subsection (2) has passed.

SOURCES: Ontario Securities Act, s. 64; Ontario Securities Act, 1978, s. 70; ALI Federal Securities Code, s. 504(b).

PART 6

EXEMPTIONS FROM PROSPECTUS REQUIREMENTS

6.01 Part 5 does not apply to a distribution

- (a) by a registrant where the purchaser is a registrant acting as principal;
- (b) where the purchaser is an underwriter of the security being distributed;
- (c) by an issuer
 - (i) of a security of its own issue that is distributed to holders of its securities as a dividend;
 - (ii) of a security to holders of its securities as incidental to a reorganization or winding up or to a distribution of its assets for the purpose of winding up its affairs, or
 - (iii) of a security pursuant to the exercise of a right to acquire the security, which right was previously granted by the issuer,
- if no commission or other remuneration is paid or given in respect of the distribution except for ministerial or professional services or for services, other than the solicitation of investors, performed by a registrant;
- (d) by an issuer
 - (i) of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and
 - (ii) of securities pursuant to the exercise of such a right,
- if the issuer files with the Commission a notice in prescribed form that is to be sent to its securityholders, and
- (iii) the Commission does not inform the issuer in writing within ten days of the filing that it objects to the distribution, or
- (iv) the issuer files with the Commission and sends to its securityholders information relating to the securities that is satisfactory to and accepted by the Commission;
- (e) of a security that is exchanged by or for the account of the issuer with another issuer or the securityholders of another issuer pursuant to
 - (i) a statutory amalgamation or arrangement, or

Trading exemptions: registrants

underwriter

stock dividend
distribution of assets

exercise of right to acquire

rights offering

amalgamation

takeover bid

(ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;

sale to employees

(f) by an offeror pursuant to a takeover bid;

(g) by an issuer of securities of its own or an affiliate's issue to its employees, if

(i) the employees are not induced to purchase by the expectation of employment or continued employment with the issuer, and

(ii) no commission or other remuneration is paid or given in respect of the distribution except for ministerial of professional services or for services, other than the solicitation of employees, performed by a registrant;

isolated sale

(h) by or for the issuer or owner by means of an isolated sale that is not made in the course of continued or successive sales of the same security; and

by Commission

(i) where the Commission by order declares that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Commission may make the distribution subject to any conditions it considers appropriate including conditions determining the standards of civil liability applicable to the distribution.

SOURCES: Ontario Securities Act, ss. 58(1)(c), (d); Ontario Securities Act, 1978, ss. 71(1)(f), (g), (h), (i), (j), (l), (n), (q), (r); ALI Federal Securities Code, s. 512.

Sales to exempt institutions

6.02 (1) Part 5 does not apply to a distribution to

- (a) a bank to which the *Bank Act* or the *Quebec Savings Bank Act* applies,
- (b) the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act*,
- (c) a loan, trust or insurance corporation or a credit union that is registered or licensed under a provincial statute or an act of Parliament,
- (d) a registered adviser,
- (e) Her Majesty in right of Canada or a province of Canada,
- (f) a municipal corporation or public board or commission in Canada, and
- (g) a person declared an exempt purchaser by Commission order

who purchases as principal or as a trustee for accounts fully managed by it.

(2) Part 5 does not apply to a distribution to fewer than fifty purchasers each of whom is a sophisticated purchaser if

- (a) the distribution is not accompanied by an advertisement other than an announcement, as prescribed, of its completion, and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services performed by a registrant.

(3) For the purposes of this section "sophisticated purchaser" means

- (a) a person who purchases as principal if the aggregate acquisition cost to him of the trade is at least \$97,000;
- (b) a person who
 - (i) has access to substantially the same information concerning the issuer that is required in a prospectus under Part 5, and
 - (ii) by virtue of his net worth and investment experience or of consultation with or advice from a registered adviser who receives no remuneration from the issuer or selling securityholder in connection with the distribution is able to evaluate a security as an investment on the basis of information provided to him by the seller; and
- (c) an officer or director of the issuer or his spouse, parent, brother, sister or child.

(4) A person who sells a security pursuant to an exemption under this section shall file a report in prescribed form with the Commission within ten days of the execution of the sale.

(5) A person who purchases a security in a trade referred to in this section shall file with the Commission a notice in prescribed form when he sells the security.

(6) For the purposes of this Act, a person who purchases a security pursuant to an exemption under paragraph 6.01(h) from a person who he knows acquired it in a trade referred to in this section is in the same position as his seller for the remainder of the period specified in paragraph 2.17(b) with regard to the security.

SOURCES: Ontario Securities Act, ss. 58(1)(a), (b); Ontario Securities Act, 1978, ss. 71(1)(a), (c), (d), (p), ss. 71(3), (4); ALI Federal Securities Code, s. 242(b).

6.03 (1) Part 5 does not apply to a limited offering.

sales to
sophisticated
purchasers

definition of
"sophisticated
purchaser"

duty of seller to
file

duty of
purchaser to file

purchaser in
same position as
seller

Limited offering

definition of
"limited
offering"

(2) For the purposes of this section "limited offering" means a distribution within a period prescribed by the Commission to not more than thirty-five purchasers of the securities distributed where

- (a) the issuer or selling securityholder obtains an agreement from each purchaser that is filed with the Commission under which each purchaser agrees to file or cause to be filed with the Commission a prospectus with respect to the securities if a sale of the securities purchased by him results in there being more than thirty-five owners of the distributed securities within three years of the completion of the distribution or such other time as the Commission prescribes and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services other than the solicitation of investors by a registrant.

Commission
power to enforce
agreement

(3) The Commission may enforce an agreement filed with it pursuant to paragraph (2)(a).

regulations

- (4) The Commission may make regulations
 - (a) establishing further conditions for a limited offering,
 - (b) requiring a statement as prescribed to be printed on a certificate for a security sold pursuant to this section, and
 - (c) requiring a person who makes a limited offering and a purchaser of a security in such an offering to file a report as prescribed with the Commission.

SOURCES: Ontario Securities Act, 1978, s. 71(1)(p); ALI Federal Securities Code, s. 242(b).

Trading
transaction

definition of
"trading
transaction"

6.04 (1) Part 5 does not apply to a trading transaction.

(2) For the purposes of this section "trading transaction" means a distribution of a security of a reporting issuer executed through a registrant where

- (a) the issuer has been registered under Part 4 for at least one year or such other period as the Commission prescribes immediately preceding the distribution and the issuer has complied with the filing requirements of this Act;
- (b) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registrant in connection with a trade in the market; and
- (c) the sales by or on behalf of the issuer or selling securityholder do not during a prescribed period exceed

- (i) an amount in dollars,
- (ii) a percentage of trading volume,
- (iii) a percentage of outstanding securities of the class,
or
- (iv) any combination of the limits referred to in sub-paragraphs (i) to (iii) prescribed by the Commission.

(3) Where trades made pursuant to this section result in an increase in the trading activity of securities of an issuer, the Commission may by order

- (a) require the issuer to file and disseminate such information as it believes necessary for the protection of investors, and
- (b) reduce the number of securities of the issuer that may be distributed in trading transactions during a period prescribed pursuant to paragraph (2)(c).

SOURCES: Ontario Securities Act, s. 58(2)(c); ALI Federal Securities Code, s. 242(c); *cf.* Manitoba Securities Act, s. 19(1)(2); Ontario Securities Act, 1978, s. 71(1)(b).

6.05 Part 5 does not apply to a distribution where all of the sales are made in the same province.

SOURCES: Securities Act of 1933, s. 3(a)(11); ALI Federal Securities Code, s. 514.

Commission power to require disclosure

Intraprovincial distribution

PART 7

REPORTING ISSUER DISCLOSURE

A. *Continuous Disclosure*

7.01 (1) A reporting issuer shall, within ninety days after the end of its most recent financial year, send to each of its securityholders and concurrently file with the Commission a copy of its annual report containing the information prescribed by the Commission.

Annual report

(2) An annual report may contain information that is not required under subsection (1) if it is not of a type prohibited by regulation.

additional information

SOURCES: Canada Business Corporations Act, ss. 149, 153, 154; Ontario Securities Act, ss. 120, 131; Ontario Securities Act, 1978, ss. 77, 78; ALI Federal Securities Code, s. 602.

7.02 (1) A reporting issuer shall send to each of its securityholders, other than holders of its debt securities, and concurrently file with the Commission a quarterly report containing the information prescribed

Quarterly reports

- (a) for the first quarter of its current financial year within one hundred and twenty days after the end of its most recent financial year,
- (b) for the second quarter of its current financial year within two hundred and ten days after the end of its most recent financial year, and
- (c) for the third quarter of its current financial year within three hundred days after the end of its most recent financial year.

(2) A quarterly report may contain information that is not required under subsection (1) if it is not of a type prohibited by regulation.

additional information

SOURCES: Ontario Securities Act, ss. 130, 131; Ontario Securities Act, 1978, ss. 76, 78; ALI Federal Securities Code, s. 602.

7.03 (1) Where a reporting issuer learns of a material fact relating to its business or affairs that has not become public, it shall forthwith issue and file with the Commission a press release disclosing the fact unless the disclosure would be unduly prejudicial to its business or affairs.

Timely disclosure: press release

notice of
material fact

(2) Where an issuer does not disclose a material fact pursuant to subsection (1), it shall, without disclosing the fact, send to the Commission a notice stating that a material fact exists, and shall

- (a) issue and file a press release pursuant to subsection (1) as soon as disclosure of the fact ceases to be unduly prejudicial to its business or affairs, or
- (b) if the fact ceases to be material, file with the Commission a notice to that effect.

confidentiality
of notice

(3) The Commission shall keep confidential a notice that a material fact exists sent to it pursuant to subsection (2).

SOURCE: Ontario Securities Act, 1978, s. 74.

B. *Proxy Solicitation*

Definitions:

“form of proxy”

7.04 In this Part

- (a) “form of proxy” means a written or printed form that, upon completion and execution by or on behalf of a securityholder, becomes a proxy;
- (b) “proxy” means a completed and executed form of proxy by means of which a securityholder appoints a person to attend and act on his behalf at a meeting of securityholders;
- (c) “solicit” or “solicitation” includes
 - (i) a request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) a request to execute or not to execute a form of proxy or to revoke a proxy, and
 - (iii) the sending of a form of proxy or other communication to a securityholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy,
 but does not include
 - (iv) the sending of a form of proxy to a securityholder in response to an unsolicited request made by him or on his behalf,
 - (v) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
 - (vi) the sending by a registrant of the documents referred to in section 7.09, or
 - (vii) a solicitation by a person in respect of a security of which he is the beneficial owner; and
- (d) “solicitation by the management of an issuer” means a solicitation by a person pursuant to a resolution or

“solicitation by
management”

instructions of, or with the acquiescence of, the directors or a committee of the directors of the issuer.

SOURCES: Canada Business Corporations Act, s. 141; Ontario Securities Act, ss. 1(1)8, 1(1)16, 101(c), 103(2); Ontario Securities Act, 1978, ss. 1(1)15, 1(1)34, 83(b), 85(2); ALI Federal Securities Code, ss. 603(a), 603(i)(7) and (9).

7.05 The directors of a reporting issuer shall, concurrently with giving notice of a meeting of securityholders, send a form of proxy in prescribed form to each securityholder who is entitled to receive notice of the meeting. Mandatory solicitation

SOURCES: Canada Business Corporations Act, s. 143(1); Ontario Securities Act, s. 102; Ontario Securities Act, 1978, s. 84.

7.06 A person shall not solicit proxies from securityholders of a reporting issuer unless Proxy circulars

- (a) in the case of a solicitation by the management of the issuer, a management proxy circular containing the information prescribed by the Commission, or
- (b) in the case of any other solicitation, a dissident's proxy circular containing the information prescribed by the Commission

is sent concurrently to each securityholder whose proxy is solicited, to the Commission and, if paragraph (b) applies, to the issuer.

SOURCES: Canada Business Corporations Act, s. 144; Ontario Securities Act, s. 103; Ontario Securities Act, 1978, s. 85; ALI Federal Securities Code, ss. 603(b), (c), (e).

7.07 (1) A proxy is valid only if executed by the securityholder in respect of whose securities it is given or by his agent authorized in writing. Execution of proxy

(2) A proxy is valid only at the meeting in respect of which it is given or any adjournment thereof. validity of proxy

(3) A securityholder may revoke a proxy

- (a) by depositing an instrument in writing executed by him or by his agent authorized in writing with the chairman of the meeting on or prior to the day of the meeting, or
- (b) in any other manner permitted by law.

revocation of proxy

SOURCE: Canada Business Corporations Act, s. 142.

7.08 A person who solicits a proxy and is appointed proxyholder shall attend in person or cause an alternate proxyholder Duty to attend meeting

to attend the meeting in respect of which the proxy is given and shall comply with the directions of the securityholder who appointed him.

SOURCES: Canada Business Corporations Act, s. 146; ALI Federal Securities Code, s. 603(g).

Voting by registrant

7.09 Securities of a reporting issuer that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant shall not be voted by him unless he forthwith after receipt of a proxy circular

- (a) complies with the requirements of section 11.05 in respect of the circular and any document accompanying it, and
- (b) except where he has received written voting instructions from the beneficial owner of the securities, sends to him a written request for such instructions.

SOURCES: Canada Business Corporations Act, s. 147; Ontario Securities Act, s. 80; Ontario Securities Act, 1978, s. 48.

Exempt solicitations

7.10 Sections 7.05 to 7.08 do not apply to a solicitation

- (a) of fewer than fifteen securityholders other than by the management of the issuer the securityholders of which are solicited,
- (b) of offerees by an offeror pursuant to a takeover bid made in compliance with this Act where the proxy is given subject to the condition that it will not be used unless the offeror is the beneficial owner of the securities in respect of which it is given, or
- (c) of securityholders under the supervision of a court.

SOURCES: Ontario Securities Act, s. 103(2)(a); Ontario Securities Act, 1978, s. 85(2)(a); ALI Federal Securities Code, ss. 603(i)(7), (8), (11).

C. Insider Reporting

Definition of "insider"

7.11 (1) In this Part "insider" means

- (a) a director or officer of a reporting issuer,
- (b) a reporting issuer that purchases securities issued by it,
- (c) a reporting issuer that trades securities issued by any of its affiliates, and
- (d) a person who beneficially owns more than ten percent of the equity securities of a reporting issuer or who exercises control or direction over more than ten percent of the votes attached to equity securities of a reporting issuer, excluding securities owned by an underwriter

under an underwriting agreement while the securities are in the course of a distribution.

(2) For the purposes of this Part presumptions

- (a) a director or officer of an issuer that is an insider of a reporting issuer is an insider of the reporting issuer;
- (b) a director or officer of a subsidiary issuer is an insider of a reporting issuer that controls it;
- (c) a person owns beneficially securities beneficially owned by an issuer controlled by him directly or indirectly;
- (d) an issuer owns beneficially securities beneficially owned by its affiliates;
- (e) an insider owns beneficially securities owned by his associates; and
- (f) the purchase or sale by an insider of a right to acquire a security is a change in the beneficial ownership of the security to which the right to acquire relates.

(3) For the purposes of this Part deemed insiders

- (a) if an issuer becomes an insider of a reporting issuer or enters into a business combination with a reporting issuer, a director or officer of the issuer or a securityholder of the issuer who is a person referred to in paragraph (1)(d) is deemed to have been an insider of the reporting issuer for the previous six months or for such shorter period as he was a director, officer or such a securityholder of the issuer, and
- (b) if a reporting issuer becomes an insider of an issuer or enters into a business combination with an issuer, a director or officer of the issuer or a securityholder of the issuer who is a person referred to in paragraph (1)(d) is deemed to have been an insider of the reporting issuer for the previous six months or for such shorter period as he was a director, officer or such a securityholder of the issuer.

(4) In subsection (3) “business combination” means an acquisition of all or substantially all the property of one issuer by another or an amalgamation of two or more issuers. definition of “business combination”

SOURCES: Canada Business Corporations Act, s. 121; Ontario Securities Act, ss. 1(6), 1(7), 109; Ontario Securities Act, 1978, ss. 1(1)17, 1(5), 1(6), 1(8), 1(9).

7.12 (1) A person who is an insider of an issuer when it files a registration statement under Part 4 shall file with the Commission an insider report in prescribed form within ten days after the end of the month in which the registration statement is filed. First insider report

same (2) A person who becomes an insider referred to in paragraphs 7.11(1)(a) to (c) shall, within ten days after the end of the month in which he becomes an insider, file with the Commission an insider report in prescribed form.

deemed insider report (3) A person who is deemed to have been an insider under subsection 7.11(3) shall, within ten days after the end of the month in which he is deemed to have become an insider, file with the Commission the insider reports for the period in respect of which he is deemed to have been an insider that he would have been required to file under this section had he been otherwise an insider for the period.

SOURCES: Canada Business Corporations Act, ss. 122(1)-(3); Ontario Securities Act, s. 110(1), (2); Ontario Securities Act, 1978, ss. 102(1), (3); ALI Federal Securities Code, s. 605(a)(1).

Accelerated insider report **7.13** (1) A person who becomes an insider referred to in paragraph 7.11(1)(d) shall, within three days of the day on which he becomes such an insider, file with the Commission an insider report in prescribed form.

subsequent accelerated reports (2) An insider referred to in subsection (1) shall, within three days of purchasing an additional five percent of the equity securities of the issuer or acquiring control or direction over an additional five percent of the votes attached to equity securities of the issuer, file with the Commission an insider report in prescribed form.

SOURCES: Ontario Securities Act, s. 110a; Ontario Securities Act, 1978, s. 103; ALI Federal Securities Code, ss. 605(a)(4), 605(b).

Subsequent insider reports **7.14** An insider whose interest in securities of the issuer of which he is an insider changes from that shown or required to be shown in the last insider report filed or required to be filed by him shall, within ten days after the end of the month in which the change takes place, file with the Commission an insider report in prescribed form.

SOURCES: Canada Business Corporations Act, s. 122(4); Ontario Securities Act, s. 110(3); Ontario Securities Act, 1978, s. 102(2).

Nominee report **7.15** Where securities are registered in the name of a person, other than the beneficial owner, who knows that they are beneficially owned by an insider and that the insider has failed to file an insider report required under this Act, the person shall file with the Commission an insider report in prescribed form.

SOURCE: Ontario Securities Act, 1978, s. 105.

7.16 (1) An insider report filed by a person referred to in paragraph 7.11(2)(c) that includes securities beneficially owned by him is an insider report of an issuer referred to in paragraph 7.11(2)(c) and the issuer is not required to file a separate insider report.

Integrated
insider report

(2) An insider report filed by an issuer referred to in paragraph 7.11(2)(d) that includes securities beneficially owned by it is an insider report of an affiliate referred to in paragraph 7.11(2)(d) and the affiliate is not required to file a separate insider report.

same

SOURCES: Canada Business Corporations Act, ss. 122(5), (6); Ontario Securities Regulations, s. 66.

7.17 (1) An insider is not required to file an insider report in respect of a small trade.

Small trade
exemption

(2) The Commission shall by regulation define a small trade for the purposes of this section.

regulations

SOURCE: New.

7.18 Where the laws of the jurisdiction in which an issuer is incorporated or organized require the issuer to file substantially the same reports or documents containing substantially the same information as is required under sections 7.01 to 7.17, the issuer may comply with the requirements of this Part by filing with the Commission in prescribed form copies of the reports or documents required under the laws of that jurisdiction.

Filings from
other jurisdictions

SOURCES: Ontario Securities Act, ss. 104, 116, 132(1)(c); Ontario Securities Act, 1978, ss. 81, 87, 117.

D. Takeover Bids

7.19 In this Part

Definitions:

(a) “exempt offer” means an offer

“exempt offer”

(i) to fewer than fifteen securityholders to purchase equity securities, and

(ii) to purchase equity securities through a registered securities exchange or in the over-the-counter market in the manner and circumstances prescribed by the Commission;

(b) “offer” includes an invitation to make an offer;

“offer”

(c) “offeree” means a person to whom a takeover bid is made;

“offeree”

(d) “offeree issuer” means an issuer whose securities are the object of a takeover bid;

“offeree issuer”

(e) “offeror” means a person, other than an agent, who makes a takeover bid, and includes two or more persons who directly or indirectly,

“offeror”

"takeover bid"

- (i) make takeover bids jointly or in concert, or
- (ii) intend to exercise jointly or in concert voting rights attached to securities for which a takeover bid is made; and
- (f) "takeover bid" means an offer, other than an exempt offer, made to securityholders at approximately the same time to acquire equity securities that, if combined with securities beneficially owned or controlled, directly or indirectly, by the offeror or an affiliate or associate of the offeror on the date of the takeover bid, would exceed ten percent of the issued equity securities or ten percent of the votes attached to equity securities of a reporting issuer and includes every offer, other than an exempt offer, by an issuer to repurchase its own equity securities.

SOURCES: Canada Business Corporations Act, s. 187; Ontario Securities Act, s. 81; Ontario Securities Act, 1978, s. 88; ALI Federal Securities Code, ss. 299.68, 606(a).

Bid for all securities of class

7.20 Where a takeover bid is for all the securities of a class,

- (a) securities deposited pursuant to the bid, if not taken up by the offeror, may be withdrawn by or on behalf of an offeree at any time after sixty days following the date of the bid, and
- (b) the offeror shall not take up securities deposited pursuant thereto until ten days after the date of the bid.

SOURCES: Canada Business Corporations Act, s. 188; Ontario Securities Act, ss. 82(2), (11); Ontario Securities Act, 1978, ss. 89(1)3, 13; ALI Federal Securities Code, ss. 606(f), (g).

Bid for less than all securities of class

7.21 (1) Where a takeover bid is for less than all the securities of a class,

- (a) the offeror shall not take up securities deposited pursuant thereto until twenty-one days after the date of the bid;
- (b) the period of time within which securities may be deposited pursuant to the bid or any extension thereof shall not exceed thirty-five days from the date of the bid; and
- (c) if a greater number of securities is deposited pursuant to the bid than the offeror is bound or willing to take up and pay for, the securities taken up by the offeror shall be taken up rateably, disregarding fractions, according to the number of securities deposited by each offeree.

(2) Where a takeover bid for all the securities of a class is converted by amendment or otherwise to a bid for less than all the securities of a class, the bid is a takeover bid to which subsection (1) applies.

conversion of bid

SOURCES: Canada Business Corporations Act, s. 189; Ontario Securities Act, ss. 82(4), (5), (7), 84(2); Ontario Securities Act, 1978, ss. 89(1)6, 7, 9, 90(1); ALI Federal Securities Code, ss. 606(e)-(g), (j).

7.22 Whether a takeover bid is for all or less than all the securities of a class, Every bid

- (a) securities deposited pursuant to the bid may be withdrawn by or on behalf of an offeree at any time within ten days after the date of the bid;
- (b) securities deposited pursuant to the bid shall, if the terms stipulated by the offeror and not subsequently waived by him have been complied with, be taken up and paid for within fourteen days after the last day within which securities may be deposited pursuant to the bid;
- (c) the period of time within which securities may be deposited pursuant to the bid shall not be less than twenty-one days after the date of the bid;
- (d) if the terms of the bid are amended by increasing the consideration offered for the securities, the offeror shall pay the increased consideration to each offeree whose securities are taken up pursuant to the bid whether or not the securities have been taken up by the offeror before the amendment of the bid;
- (e) if the offeror intends to purchase securities to which the bid relates in the market during the period of time within which securities may be deposited pursuant to the bid, he shall so state in the takeover bid circular; and
- (f) if the offeror purchases securities to which the bid relates other than pursuant to the bid during the period of time within which securities may be deposited pursuant to the bid,
 - (i) the payment of an amount for a security that is greater than the amount offered in the bid is deemed to be an amendment of the bid to which paragraph (d) applies,
 - (ii) the offeror shall immediately notify the offerees of the increased consideration being offered for the securities,

- (iii) the securities acquired other than pursuant to the bid shall be counted to determine whether a condition as to minimum acceptance has been fulfilled, and
- (iv) the securities acquired other than pursuant to the bid shall not be counted among the securities taken up rateably under paragraph 7.21(c).

SOURCES: Canada Business Corporations Act, s. 190; Ontario Securities Act, ss. 82(1), (3), (6), (9), (11), 84(1); Ontario Securities Act, 1978, ss. 89(1)2, 4, 8, 10, 13, 89(3); ALI Federal Securities Code, ss. 606(e), (h), (j), (k).

Arrangements
for funds in cash
bid

7.23 Where an offeror offers money as all or part of the consideration for securities in a takeover bid, he shall make adequate arrangements to ensure that funds are available to make the required money payment for the securities.

SOURCES: Canada Business Corporations Act, s. 192; Ontario Securities Act, s. 85; Ontario Securities Act, 1978, s. 93.

Sending bid

7.24 (1) A takeover bid, including a copy of the takeover bid circular in prescribed form, and any amendment of the bid shall be sent to each equity securityholder of the offeree issuer resident in Canada and to each director of the offeree issuer, and shall be filed concurrently with the Commission.

date of bid

(2) The date of a takeover bid is the date on which it is sent to offerees.

SOURCES: Canada Business Corporations Act, s. 191; Ontario Securities Act, ss. 83, 86; Ontario Securities Act, 1978, ss. 92, 94, 95; ALI Federal Securities Code, s. 606(d).

Directors'
circular

7.25 (1) The directors of an offeree issuer shall send a directors' circular in prescribed form to each equity securityholder of the offeree issuer resident in Canada, to each director of the offeree issuer and to the offeror, and concurrently shall file a copy of it with the Commission.

notice

(2) Unless the directors of an offeree issuer send a directors' circular under subsection (1) within ten days of the date of a takeover bid, they shall forthwith send a notice in prescribed form to the offerees and the Commission which notice

- (a) shall state that a directors' circular will be sent, and
- (b) may recommend that the offerees not tender their securities pursuant to the bid until they receive the directors' circular.

(3) The directors shall send the directors' circular in accordance with subsection (1) at least seven days before the termination date of the takeover bid or before the sixtieth day of the bid, whichever is earlier.

time of
directors'
circular

(4) Where a director of an offeree issuer is of the opinion that a takeover bid is not advantageous to its securityholders or where he disagrees with any statement in a directors' circular or a notice sent pursuant to subsection (2), he is entitled to indicate his opinion or disagreement in the directors' circular required by subsection (1) and, if he so indicates, shall include in the circular a statement setting out the reasons for his opinion or disagreement.

dissent of
director

SOURCES: Canada Business Corporations Act, s. 194; Ontario Securities Act, s. 87; Ontario Securities Act, 1978, s. 96.

PART 8**MARKET ACTORS****8.01 (1) No person shall**

- (a) carry on business as a broker or dealer unless he is registered as such or as a salesman, partner or officer of a registered broker or dealer on whose behalf he is trading, Registration:
brokers and
dealers
- (b) carry on business as an adviser unless he is registered as such or as a partner or officer of a registered adviser on whose behalf he is acting, or advisers
- (c) act as an underwriter unless he is registered as such. underwriters

(2) A registrant shall comply with any condition to which his registration is subject. conditions

(3) Registration of a salesman is suspended upon the termination of his employment until notice of the employment of the salesman by another registered broker or dealer is filed with the Commission and the reinstatement of his registration is approved by it. reinstatement of
salesman

SOURCES: Ontario Securities Act, s. 6; Ontario Securities Act, 1978, s. 24; ALI Federal Securities Code, s. 702.

8.02 (1) Subject to subsection (2), the Commission shall grant an application for registration under this Part. Standards for
registration

(2) The Commission may by order deny, suspend, cancel or restrict a registration under this Part or may reprimand a registrant where the applicant or registrant

- (a) makes a misrepresentation in an application for registration or another proceeding under this Act, misrepresenta-
tion in
application
omission
- (b) omits a material fact or document required in an application under this Act, prior conviction
- (c) has been convicted of an offence involving
 - (i) fraud or theft, or prior conviction
 - (ii) a security or an aspect of the securities business, prior conviction
- (d) violates a provision of this or another similar Act or a by-law of a self-regulatory organization registered under this or another similar Act, violation of
securities laws
- (e) fails reasonably to supervise a person subject to his supervision in order to prevent a violation of this or another similar Act, or failure to
supervise

suitability	(f) is not, consistent with the protection of investors, suitable for registration.
conditions	(3) The Commission may by regulation or order impose conditions on a registration under this Part, including without limiting the foregoing, conditions with respect to educational requirements and financial responsibility.
foreign ownership and control	(4) The Commission may by regulation <ul style="list-style-type: none"> (a) define "resident Canadian", and (b) impose conditions on a registration under this Part with respect to the ownership or control, direct or indirect, of a registrant by a person who is not a resident Canadian.
further information	(5) An application for registration shall be in prescribed form and the Commission may require an applicant or a registrant to submit further information within a specified time and may require <ul style="list-style-type: none"> (a) verification by affidavit or otherwise of any information submitted to it, and (b) the applicant or registrant or a partner, director, officer or employee of the applicant or registrant to submit to examination under oath by a person appointed by the Commission.
summary suspension	(6) Where it believes that delay would be prejudicial to the interests of investors, the Commission may make an order suspending a registration without holding a hearing as required by section 15.17 but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the suspension remains in effect until the hearing is completed.
surrender of registration	(7) The Commission may, subject to any conditions it may by order impose, accept a voluntary surrender of a registration under this Part where the financial obligations of the registrant to his clients have been discharged and the surrender is not prejudicial to the interests of investors.
Provincial registration	SOURCES: Canada Business Corporations Act, s. 2(1) "resident Canadian"; Ontario Securities Act, ss. 7, 8, 10, 12, 14; Ontario Securities Act, 1978, ss. 25, 26, 28, 30, 31; ALI Federal Securities Code, ss. 703(b), (c), 705, 1809.
	8.03 The Commission shall grant an application for registration under this Part by an applicant who is registered under the securities act of a province in the capacity for which the application is made but it may, by order, impose a condition limiting the registration to that province.

SOURCE: New.

8.04 (1) A registered securities firm shall, within the period prescribed, file with the Commission a notice in prescribed form of

- (a) a change in its address for service or a business address,
- (b) a change in its directors or officers, including the reason for any resignation, dismissal, severance or termination of employment or office,
- (c) a change in the holders of its equity securities,
- (d) the commencement and termination of employment of a salesman, including the reason for any termination,
- (e) the opening or closing of a branch office, including the name and address of the person in charge of an office that is opened,
- (f) a change in the name or address of a person in charge of a branch office, and
- (g) any other matter the Commission prescribes.

(2) A registered salesman shall within the period prescribed file with the Commission a notice in prescribed form of salesmen

- (a) a change in his address for service or his business address,
- (b) the commencement and termination of his employment by a registrant, and
- (c) any other matter the Commission prescribes.

SOURCES: Ontario Securities Act, s. 15; Ontario Securities Act, 1978, s. 32.

8.05 (1) A registrant shall keep the records necessary to record his business transactions and financial affairs and shall file with the Commission annually and at other prescribed times a financial statement in prescribed form as to his financial position.

(2) A registered securities firm that is not a member of a registered self-regulatory organization shall appoint an auditor satisfactory to the Commission who shall examine the affairs of the registrant as prescribed and report thereon to the Commission.

SOURCES: Ontario Securities Act, ss. 31, 32; Ontario Securities Act, 1978, ss. 20, 21; ALI Federal Securities Code, s. 1805(d).

8.06 (1) This Part does not apply to

- (a) Her Majesty in right of Canada or a province of Canada,
- (b) a municipal corporation or public board in Canada, or

Exemptions:
government
bodies

exemptions: all persons

(2) This Part does not apply to a person who carries on a business of trading in securities that consists exclusively of

- (a) trading in a security referred to in paragraphs 3.01(a) to (d),
- (b) trading in a security issued by a mutual fund,
- (c) sales of securities to persons referred to in subsection 6.02(1), or
- (d) sales by or for the account of a secured creditor of securities that are pledged, mortgaged or otherwise encumbered in good faith as security for the payment of a debt owed to the creditor for the purpose of liquidating the debt.

brokers and dealers

(3) This Part does not apply to a person who carries on a business as a broker or dealer that consists exclusively of

- (a) trading as
 - (i) an executor, administrator, guardian or committee,
 - (ii) an authorized trustee or assignee or an interim official receiver or custodian under the *Bankruptcy Act*, or
 - (iii) a receiver or liquidator under an act governing the winding up and distribution of assets of a person;
- (b) the execution of unsolicited orders to trade a security through a registrant by
 - (i) a bank to which the *Bank Act* or the *Quebec Savings Bank Act* applies, or
 - (ii) a trust corporation that is registered or licensed under a provincial statute or an act of Parliament;
- (c) trading in securities by
 - (i) a bank,
 - (ii) an insurance, trust or loan corporation,
 - (iii) a mutual fund, or
 - (iv) any other financial institution
 for its own account or for an account held in trust or otherwise managed by it; or
- (d) trading in securities by a person for his own account with or through a registrant.

execution by bank or trust corporation

institutional portfolio trades

trades for own account

advisers

(4) This Part does not apply to a person who carries on a business as an adviser that is solely incidental to

registered broker or dealer

- (a) the conduct of his business as a registered broker or dealer or a partner, officer or salesman of such a registrant;

- (b) the practice of his profession as a lawyer, accountant, engineer, teacher, banker or other expert prescribed by the Commission; or practice of a profession
- (c) his publication of or writing for a newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to purchasers thereof and who
 - (i) acts as an adviser only through the publication,
 - (ii) has no interest, directly or indirectly, in any security upon which advice is given, and
 - (iii) receives no commission or other consideration for the advice.newspapers and periodicals

SOURCES: Ontario Securities Act, ss. 18, 19; Ontario Securities Act, 1978, ss. 33, 34; ALI Federal Securities Code, ss. 279(b), 702(b).

8.07 Part 8 does not apply to a person who carries on business as a broker, dealer or adviser or who acts as an underwriter only in one province. Intraprovincial business

SOURCE: New.

PART 9

SELF-REGULATORY ORGANIZATIONS

9.01 (1) No person shall carry on business as a securities exchange or clearing agency unless it is registered as such under this Part.

Registration of self-regulatory organizations: securities exchange and clearing agency

(2) No person shall carry on activities as an association of securities firms in more than one province unless it is registered as such under this Part.

association of securities firms

(3) An association of securities firms that carries on its activities only in one province may apply for registration under this Part.

intraprovincial association

SOURCES: Ontario Securities Act, s. 140(1); Ontario Securities Act, 1978, s. 22(1); ALI Federal Securities Code, s. 802.

9.02 (1) Forthwith after receipt of an application for registration under this Part in prescribed form, the Commission shall publish a notice inviting any interested person to submit written comments on the application.

Application and standards for registration

(2) Subject to subsections (3) and (4), the Commission shall by order grant an application for registration under this Part.

registration

(3) Subject to subsection (5), the Commission shall by order deny an application for registration under this Part if

standards for registration

(a) the applicant is not organized in a manner or does not have the capacity and resources that enable it to comply with this Act and to enforce compliance by its members and their employees with its by-laws, or

(b) the by-laws of the applicant do not comply with section 9.03.

(4) The Commission may by order deny an application for registration under this Part if the applicant or a director or officer of the applicant would be denied registration under subsection 8.02(2).

standards for denial

(5) Where the Commission grants an application for registration under this Part, it may require a change in the by-laws of the applicant to ensure its fair administration or to make the by-laws conform to the requirements of or otherwise further the purposes of this Act.

change in by-laws

competition factors

(6) Where the Commission grants an application for registration under this Part, it shall expressly consider in its reasons the by-laws of the applicant that relate to

- (a) prices, fees or rates charged by members of the applicant for services,
- (b) conditions of entry into the securities market through membership in the applicant or otherwise,
- (c) the structure or form of a member or participant,
- (d) the quantity or quality of services furnished by a member or participant, and
- (e) any other type of restraint on competition.

surrender of registration

(7) The Commission may, subject to any conditions it may impose by regulation or order, accept a voluntary surrender of a registration under this Part.

SOURCE: ALI Federal Securities Code, ss. 803(a), (b), (d), (e), 804.

By-laws of applicants

9.03 (1) The by-laws of an applicant for registration under this Part shall

- (a) be designed to protect investors and the public interest,
- (b) be designed to foster cooperation and coordination with persons who clear, settle, regulate, process information about and facilitate trades in securities,
- (c) ensure fair representation of its members in the administration of its affairs,
- (d) provide an equitable allocation of reasonable fees and charges among persons who use its facilities,
- (e) provide that a member or employee of a member shall be disciplined, as appropriate, for contravention of its by-laws or a provision of this Act by censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of or exclusion from employment by a member or any other appropriate penalty, and
- (f) specify the procedure required by section 9.09 for disciplinary proceedings, denial of membership, exclusion from employment by a member or denial or limitation of access to services furnished by it or its members.

by-laws of securities exchange and association of firms

(2) The by-laws of an applicant for registration as a securities exchange or association of securities firms shall

- (a) be designed to prevent deceptive and manipulative acts and practices, to promote fair trading practices and to facilitate an efficient market, and

- (b) subject to section 9.09, provide that a registered securities firm may become a member and that any person may become an employee of a member.
- (3) The by-laws of an applicant for registration as a clearing agency shall
 - (a) be designed
 - (i) to develop and operate a prompt and accurate clearance and settlement system, and
 - (ii) to safeguard money and securities in its custody or under its control or for which it is responsible; and
 - (b) subject to section 9.09, provide that a registered securities firm, a regulated financial institution, another registered clearing agency or a person or class of persons designated by the Commission by regulation or order may become a participant.
- (4) The by-laws of an applicant for registration under this Part shall not
 - (a) permit unfair discrimination among persons who use its facilities, or
 - (b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

SOURCE: ALI Federal Securities Code, ss. 803(f)-(l).

9.04 (1) The Commission shall grant an application for registration under this Part if it is made in prescribed form within ninety days after this Act comes into force by an applicant that is registered or recognized under the securities act of a province in the capacity for which the application is made.

(2) Where an application is made under this section, the Commission may by order require a change in the by-laws of the applicant to ensure its fair administration or to make the by-laws conform to the requirements or otherwise further the purposes of this Act.

(3) Where the Commission grants an application for registration under this section, it shall expressly consider the by-laws of the applicant referred to in subsection 9.02(6).

SOURCE: New.

9.05 (1) The Commission may by regulation or order require a registered self-regulatory organization to administer or enforce any provision of this Act that is consistent with its objectives.

(2) The Commission may by order

by-laws of clearing agency

prohibited by-laws

Mandatory registration: transition

change in by-laws

competition policy

Delegation of administration of Act

allocation of authority

(a) allocate authority among two or more registered self-regulatory organizations, or

(b) require them to act jointly

to deal with any matter over which they have authority under this Act.

relief from
regulatory
duties

(3) The Commission may by regulation or order relieve

(a) a registered self-regulatory organization, wholly or in part, of its duty to regulate the activities of a person who is a member of it and of any other such organization, and

(b) the member from his duty to comply with the by-laws of the organization to the extent that it is relieved of its duty under paragraph (a).

notice of relief
from duties

(4) Where the Commission under subsection (3) relieves an organization or a member of a duty, it may in the regulation or order require the organization or the member to notify persons doing business with the member of the extent to which the organization has been relieved of its responsibility for his acts, practices or course of business.

SOURCE: ALI Federal Securities Code, s. 806(c)(1).

Amendments to
by-laws

9.06 (1) Where a registered self-regulatory organization proposes to amend its by-laws, it shall file with the Commission a copy of the proposed amendment and a concise statement of its substance and purpose.

notice of
proposed
amendment

(2) Forthwith after receipt of a proposed amendment under subsection (1) the Commission shall, subject to subsection (5), publish a notice inviting any interested person to submit written comments on the amendment.

Commission
approval

(3) Subject to subsection (4), the Commission shall by order approve a proposed amendment to the by-laws of a registered self-regulatory organization.

standards for
approval

(4) The Commission shall by order deny a proposed amendment to the by-laws of a registered self-regulatory organization if

(a) the organization is not organized in a manner and would not have the capacity and resources to enforce compliance with its by-laws as amended,

(b) the amended by-laws would not comply with section 9.03, or

(c) the amended by-laws would be inconsistent with a provision of this Act.

summary
approval

(5) Where the Commission determines that a proposed amendment filed pursuant to subsection (1)

- (a) grants an exemption or relieves a restriction,
- (b) makes no material substantive change in an existing by-law,
- (c) relates exclusively to the administration of the organization, or
- (d) is necessary to maintain a fair and orderly market, to safeguard money or securities or to maintain the financial responsibility of a member,

it may approve the amendment without providing an opportunity for a hearing pursuant to section 15.17 and the amendment is effective as of the later of its passage by the organization or the approval of the Commission.

SOURCES: Canada Business Corporations Act, s. 254(3); Ontario Securities Act, s. 140(2)(b); Ontario Securities Act, 1978, s. 22(2)(b); ALI Federal Securities Code, ss. 805(b), (c).

9.07 (1) The Commission may by order require a change in the by-laws of a registered self-regulatory organization to ensure its fair administration or to make the by-laws conform to the requirements of or otherwise further the purposes of this Act.

Commission power to change by-laws

(2) If the Commission proposes to make an order pursuant to subsection (1), it shall publish and send to the organization a notice that complies with subsection 15.15(1).

notice of proposed change

SOURCES: Ontario Securities Act, ss. 140(2)(a),(b); Ontario Securities Act, 1978, ss. 22(2)(a), (b); ALI Federal Securities Code, s. 805 (e).

9.08 A registered self-regulatory organization shall not require its members to comply with a schedule of commissions or other fees for their services or fix a member's income in any other manner otherwise than by a by-law or an amendment to its by-laws that the Commission approves by order pursuant to section 9.02, 9.04 or 9.06 as being

Oversight of fixed fees

- (a) reasonable in relation to the services for which the commissions or other fees are charged or the income is earned, and
- (b) a restraint on competition only to the extent necessary to achieve the objectives specified in subsections 9.03 (1) to (3).

SOURCE: ALI Federal Securities Code, ss. 803(i)(2), 908(a).

9.09 (1) Subject to subsections (2) and (3), a registered self-regulatory organization shall grant an application for membership or for approval as an employee of a member.

Application for membership

standards for membership

(2) A registered self-regulatory organization may deny or condition membership or prohibit or limit access to services furnished by it or its members to a person who

- (a) lacks the financial responsibility or operational capability required by its by-laws,
- (b) does not meet the criteria for membership specified in its by-laws, or
- (c) does not carry on the type of business that its by-laws require a member to carry on,

but it shall not deny or condition membership to a person who carries on the type of business required by its by-laws on the basis of the volume of the required business or any other business that the person carries on.

further standards

(3) A registered self-regulatory organization may deny or condition membership, prohibit or limit access to services furnished by it or its members or prohibit or condition employment by a member to a person who

- (a) lacks the training, experience or competence required by its by-laws, or
- (b) violates a provision of this or another similar Act or a by-law of a self-regulatory organization registered under this or another similar Act.

procedure for denial and discipline

(4) A registered self-regulatory organization shall, before denying or conditioning membership or approval of employment by a member and before disciplining a member or an employee of a member, comply with the procedures specified for Commission orders under subsection 15.17(1), subsections 15.17(4) to (7) and paragraphs 15.17(8)(a) and (b).

publication of discipline

(5) A registered self-regulatory organization shall publish a decision disciplining a member or an employee of a member unless the Commission permits otherwise by regulation or order.

summary suspension

(6) A registered self-regulatory organization may, without holding a hearing as required by subsection (4),

- (a) suspend
 - (i) a member who has been expelled or is under suspension from, or
 - (ii) an employee of a member who has been excluded or is under suspension from employment by the member by another self-regulatory organization that is registered under this or another similar Act;
- (b) suspend a member if the organization reasonably believes it necessary for the protection of investors,

creditors, members or the organization because of financial or operational difficulties of the member;

(c) suspend a participant who is in default of delivery of money or securities to a registered clearing agency; and

(d) prohibit or limit access to services furnished by it or its members to a person

- (i) to whom paragraph (a), (b) or (c) applies,
- (ii) who does not meet the criteria for access specified in its by-laws, or
- (iii) where such action is necessary for the protection of investors, creditors, members or the organization;

but the organization shall provide an opportunity for such a hearing within fifteen days of its decision and the suspension, prohibition or limitation remains in effect until the hearing is completed.

SOURCE: ALI Federal Securities Code, ss. 807(c), 808, 809.

9.10 (1) Where a registered self-regulatory organization makes a decision under section 9.09 denying or conditioning membership or approval of employment by a member or disciplining a member or an employee of a member, it shall at once file with the Commission a copy of the decision, the reasons therefor and any other information prescribed by the Commission.

Commission review

(2) On an appeal or review of a decision under subsection 9.09(2) or (3) the Commission shall affirm the decision if it finds that

standards for review of entry

- (a) good cause exists for the decision,
- (b) the decision is in accordance with the by-laws of the organization or a provision of this Act, and
- (c) the by-laws or the provision were applied in a manner that furthers the objectives specified in section 9.03,

but if it does not so find or finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in subsections 9.03(1) to (3), it may set aside the decision or require the organization

- (d) to admit the person affected to membership,
- (e) to permit the person to become an employee of a member,
- (f) to grant the person access to services furnished by it or its members, or
- (g) to take any other action not inconsistent with the objectives specified in section 9.03.

standards for review of discipline

(3) On an appeal or review of a decision of a registered self-regulatory organization disciplining a member or an employee of a member the Commission may

(a) affirm or modify the sanction imposed if it finds that the person disciplined violated the by-laws of the organization or a provision of this Act, or

(b) set aside the sanction imposed if it does not so find, or in either case may remand the matter to the organization for further proceedings.

competition policy standard for review

(4) On an appeal or review referred to in subsection (3) the Commission may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in subsections 9.03(1) to (3).

effect of Commission order

(5) An order made by the Commission under subsection (3) setting aside or modifying a sanction does not affect the validity of any action taken by the organization as a result of the sanction before the order was made, unless the action violated this Act or the by-laws of the organization.

SOURCES: Ontario Securities Act, ss. 140(2)(b), (3); Ontario Securities Act, 1978, ss. 22(2)(b), (3); ALI Federal Securities Code, ss. 810(a), (d), (e).

Appointment of auditor

9.11 (1) A registered self-regulatory organization shall, subject to the approval of the Commission, appoint an auditor to audit its financial affairs.

audit of members

(2) A registered securities exchange and a registered association of securities firms shall, subject to the approval of the Commission, establish a panel of auditors and shall require each of its members to appoint from the panel an auditor who shall

(a) examine the member's financial affairs in accordance with the by-laws of the organization, and

(b) report the results of the examination to the auditor of the organization.

auditor's duty to Commission

(3) The auditor of a registered self-regulatory organization shall furnish to the Commission on request a copy of a report received by him under subsection (2).

SOURCES: Ontario Securities Act, ss. 30, 31; Ontario Securities Act, 1978, ss. 19, 20; ALI Federal Securities Code, s. 806(c)(3).

Records of organization

9.12 (1) The Commission may by regulation require a registered self-regulatory organization

(a) to make records in a specified form,

(b) to retain records for a prescribed period,

- (c) to furnish to the Commission a copy of or extract from a record,
- (d) to file with the Commission any report in prescribed form, or
- (e) to disseminate to the public a report referred to in paragraph (d).

(2) The Commission may at any time authorize a person in writing to enter the premises of a registered self-regulatory organization and

- (a) to inspect its records,
- (b) to examine its or a member's financial affairs, and
- (c) to prepare such financial or other reports as the Commission requires.

(3) A registered self-regulatory organization shall

- (a) permit a person authorized by the Commission under subsection (2) to enter its premises,
- (b) produce and furnish him with a copy of any record referred to in subsection (1) or any other record that he reasonably requests, and
- (c) answer any question he asks concerning those records.

SOURCES: Ontario Securities Act, ss. 21, 141; Ontario Securities Act, 1978, ss. 11, 23; ALI Federal Securities Code, ss. 1805(b)(1), (c), 1806(g).

9.13 (1) The securities exchanges and associations of securities firms registered under this Part shall maintain a contingency fund, in the manner prescribed by the Commission, to compensate customers for losses resulting from the insolvency or bankruptcy of a member of any of the organizations or of a registrant who contributes to the fund.

(2) The self-regulatory organizations referred to in subsection (1) shall file with the Commission in the manner prescribed every document that relates to the creation, administration and operation of the contingency fund.

(3) If after consultation with the administrator of the contingency fund and the organizations referred to in subsection (1),

- (a) the Commission reasonably believes that the contingency fund does not contain sufficient assets, and
- (b) the organizations fail to contribute or cause their members to contribute to the fund an increased amount sufficient to maintain the fund's assets at a level that the Commission believes to be reasonably necessary to pay claims against the fund,

power of entry and inspection

duty to permit entry and inspection

Contingency fund

filing of documents

assessments

the Commission may by order require the organizations to contribute or collect from their members and other registrants who contribute to the fund the amount required to attain the level that the Commission believes necessary to pay the claims.

power of
inspection

- (4) The contingency fund shall at any time
 - (a) permit a person authorized by the Commission in writing to inspect its records and assets,
 - (b) produce and furnish him with any document or record that he reasonably requests, and
 - (c) answer any question he asks concerning those records or assets.

appointment of
auditor and
annual filing

(5) The contingency fund shall, subject to the approval of the Commission, appoint an auditor to audit its financial affairs and as soon as practicable after the end of its financial year shall file with the Commission a report on its operations and financial condition in the form and containing the information required by the Commission by regulation or order.

SOURCES: Securities Investor Protection Act, ss. 4(c), (d), (e)(1), 7(c); ALI Federal Securities Code, ss. 1203(b)(e), 1805(c)(1), 1806(g).

Commission
disciplinary
powers:
self-regulatory
organization

9.14 (1) Where a registered self-regulatory organization

- (a) without reasonable cause violates its by-laws or a provision of this Act,
- (b) is unable to comply with its by-laws or this Act, or
- (c) fails or is unable to enforce its by-laws or a provision of this Act that it is required under subsection 9.05(1) to administer or enforce,

the Commission may by order

- (d) censure the organization,
- (e) limit its activities, functions or operations, or
- (f) suspend or revoke its registration.

directors, officers
and employees

(2) Where a director, officer or employee of a registered self-regulatory organization without reasonable cause violates the by-laws of the organization or a provision of this Act, the Commission may by order censure him or suspend or remove him from his office or employment with the organization.

SOURCE: ALI Federal Securities Code, ss. 806(a), 1810(a), (b).

PART 10

CLEARANCE, SETTLEMENT AND TRANSFER SYSTEMS

10.01 The purpose of this Part is to facilitate the development and implementation in Canada of one or more book-entry systems for the transfer and pledge of securities whether or not they are evidenced by security certificates. Purpose

SOURCE: New.

10.02 In this Part

- (a) “blocked account” means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 10.06; “blocked account”
- (b) “interested person” means a person who has an interest in a security in an account of a participant in a clearing agency; “interested person”
- (c) “pledge” means a contractual interest in a security that is delivered to, retained by or deemed to be in the possession of a creditor to secure payment of a debt or other obligation and includes a mortgage or mortgage and pledge of a security; “pledge”
- (d) “registered owner” means a person who is or is presumed to be shown on the securities register of an issuer as the owner of a security certificate issued by it; and “registered owner”
- (e) “security certificate” means an instrument issued by or on behalf of an issuer that is evidence of a security. “security certificate”

SOURCE: New.

10.03 (1) On the issue of a security, an issuer may deliver a security certificate directly to a registered clearing agency as registered owner if Issue of certificate to clearing agency

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security and the clearing agency, and
- (b) the issue is evidenced by a written confirmation signed by the clearing agency and sent at once to the beneficial owner of the security or his agent.

(2) On the issue of a security, an issuer may, instead of delivering a security certificate, issue a security to a registered clearing agency as registered owner by means of record entries if certificateless issue

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security,
- (b) the issue is further evidenced by a written confirmation executed by the clearing agency and sent at once to the beneficial owner of the security or his agent, and
- (c) the issue is recorded at once in the securities register of the issuer and the records of the clearing agency.

effect of
certificateless
issue

(3) An issue of a security to a clearing agency under subsection (2) has the same effect as an issue to the clearing agency of a security certificate in bearer form representing the amount or number of securities issued.

proof

(4) A written confirmation referred to in paragraph (1)(b) or (2)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is owner of the securities described therein.

SOURCE: New.

Impermissible
entry

10.04 (1) A clearing agency shall not make an entry in its records in respect of a security that is not fully paid.

request by
clearing agency
for transfer

(2) Immediately after receipt of a security certificate from a participant, a clearing agency shall deliver the certificate to the issuer and request the transfer of the securities evidenced by it to the clearing agency.

transfer to
clearing agency

(3) Where a clearing agency presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing agency a security certificate representing the securities and showing the clearing agency as registered owner.

certificateless
transfer

(4) An issuer may, instead of issuing a security certificate under subsection (3), transfer a security to a clearing agency as registered owner by means of record entries if

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security,
- (b) the transfer is further evidenced by a written confirmation executed by the clearing agency and sent at once to the beneficial owner of the security or his agent, and
- (c) the transfer is recorded at once in the securities register of the issuer and the records of the clearing agency.

effect of
certificateless
transfer

(5) A transfer of a security to a clearing agency under subsection (4) has the same effect as a transfer to the clearing agency of a security certificate in bearer form representing the amount or number of securities transferred.

(6) A written confirmation referred to in paragraph (4)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is owner of the securities described therein.

SOURCE: New.

10.05 (1) On receipt of instructions in writing or machine readable form from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with the instructions effect a transfer of a security from the participant to another participant by an entry in its records.

(2) Subject to section 10.12, a transfer of a security under subsection (1) has the same effect as delivery to the transferee of a security certificate in bearer form representing the amount or number of securities transferred.

SOURCE: New.

10.06 (1) A clearing agency shall establish a procedure whereby it or an interested person may exercise control over a participant's account in the clearing agency where

- (a) the interested person is
 - (i) a beneficial owner of a security,
 - (ii) a pledgee of a security, or
 - (iii) a judgment creditor of a beneficial owner of a security
 in the participant's account; or
- (b) a security in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to subsection 10.16(3), a clearing agency shall not transfer, deliver or otherwise deal with a security in a blocked account without instructions in writing or machine readable form from the person who exercises control over it.

SOURCE: New.

10.07 (1) On receipt of instructions in writing or machine readable form from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with the instructions effect a transfer by way of pledge of a security from the participant to a pledgee by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged.

Transfer by record entry

effect of transfer

Blocked account

dealings with blocked account

Pledge by record entry

effect of pledge (2) Subject to section 10.12, a transfer by way of pledge under subsection (1) has the same effect as delivery to the pledgee of a security certificate in bearer form representing the amount or number of securities pledged.

transfer to pledgee (3) On receipt of instructions in writing or machine readable form from a pledgee in whose favour an account is blocked under subsection (1) stating that he is entitled to realize the securities in the blocked account, a clearing agency shall in accordance with the instructions transfer the securities unless (a) it knows that the pledgee is not entitled to realize the securities, or (b) its procedure established pursuant to subsection 10.06(1) specifies otherwise.

liability of clearing agency (4) A clearing agency is not liable for any loss resulting from compliance with the instructions of a pledgee under subsection (3) unless the clearing agency knows before the transfer that the pledgee is not entitled to the securities.

SOURCE: New.

Customer's blocked account **10.08** On receipt of instructions in writing or machine readable form from a participant and a beneficial owner of a security, a clearing agency may in accordance with the instructions make an entry in its records to block an account in the name of the participant in favour of the beneficial owner or in favour of a person who acts on his behalf.

SOURCE: New.

Security subject to restriction **10.09** (1) A clearing agency may refuse to open an account in respect of a security that is subject to (a) a lien in favour of its issuer, or (b) a restriction or constraint on its transfer.

conditional blocked account (2) A clearing agency may make an entry in its records to block an account in the name of a participant in favour of the clearing agency or an interested person with respect to a security referred to in subsection (1).

SOURCE: New.

Blocked account: seizure of securities **10.10** (1) On the application of a creditor who has a judgment against a beneficial owner of a security held by a clearing agency, a court may order the clearing agency to make an entry in its records to block an account in the name of the beneficial owner or his agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

transfer to court or judgment creditor (2) On receipt of an order or instructions in writing or machine readable form from a court or an officer thereof stating

that a judgment creditor in whose favour an account is blocked under subsection (1) is entitled to realize a security in the blocked account, a clearing agency shall transfer the security in accordance with the order or instructions.

(3) On the application of a person who in an action or an application under section 10.17 claims to be entitled to a security held for a beneficial owner in a clearing agency, a court may order the clearing agency to make an entry in its records to block the account in the name of the beneficial owner or his agent in favour of the claimant for the amount or number of securities mentioned in the order. caveat

(4) A clearing agency is not liable for any loss resulting from compliance with an order or instructions received under subsections (1) to (3). immunity of clearing agency

SOURCE: New.

10.11 (1) A clearing agency has no right against an issuer of a security held by it, except a right Rights of clearing agency

- (a) to be entered in the issuer's securities register as the registered owner of the security, and
- (b) to obtain from the issuer a security certificate evidencing the security.

(2) Except as provided in subsection (1), an issuer has no duty to treat a clearing agency as a registered owner of a security issued by it. issuer's duty

(3) A clearing agency is not the beneficial owner of a security held by it. beneficial ownership

SOURCE: New.

10.12 A participant has no right to pledge, transfer or otherwise deal with a security held for him by a clearing agency except through the facilities of the clearing agency. Limitation on rights of a participant

SOURCE: New.

10.13 (1) On receipt of a demand in writing or machine readable form for withdrawal of a security from a participant for whom the security is held in other than a blocked account, a clearing agency shall within a reasonable time, subject to any proceeding under section 10.17, obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security. Withdrawal of security

(2) On receipt of instructions in writing or machine readable form from a clearing agency that is the registered owner of securities to deliver a security certificate to it, the issuer of the issuer's duty

securities shall immediately deliver the certificate to the clearing agency in accordance with its instructions.

SOURCE: New.

Issuer's duty to request list of participants

10.14 (1) Where a clearing agency holds a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining securityholders entitled

(a) to receive notice of or to vote at a meeting of securityholders,

(b) to receive payment of a dividend or interest, or

(c) to participate in a liquidation distribution,

or for any other purpose, the issuer shall give the clearing agency notice as prescribed of its intention to close its securities register or fix a record date requesting from the clearing agency a list of the names of the participants for whom the clearing agency holds securities of the class made up as of the date on which it proposes to close its register or fix a record date.

clearing agency's duty to provide list

(2) On receipt of a demand in writing or machine readable form from an issuer for a list of the names of participants for whom it holds securities of a class issued by the issuer, a clearing agency shall within seven days provide the issuer with a list setting out

(a) the name and address of, and

(b) the number or amount of securities of the class held for each such participant made up as of the date specified in the demand.

notice to participants

(3) On receipt of a demand from an issuer under subsection (2), a clearing agency shall send notice of the demand to each participant that is a securities firm.

list of beneficial owners

(4) A participant that receives a notice sent pursuant to subsection (3) may

(a) furnish to the clearing agency or the issuer a list containing the name and address of and the number or amount of securities of the class held for some or all beneficial owners for whom the participant holds the securities, and

(b) instruct the clearing agency to furnish the list to the issuer or inform the clearing agency that it has done so itself.

failure to furnish list

(5) Where a participant that receives a notice sent pursuant to subsection (3) does not provide a clearing agency or the issuer with a list of all beneficial owners for whom it holds securities referred to in the notice, the participant shall at its

own expense obtain from the issuer and send to each such beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend or interest or any document the issuer wishes to send to its securityholders.

(6) A clearing agency that receives lists of beneficial owners under subsection (4) shall, before it furnishes the lists to the issuer, consolidate them into one list in a form that does not permit association of a beneficial owner with a participant and the clearing agency may charge participants a reasonable fee for the consolidation.

consolidation of lists

(7) A clearing agency shall treat as confidential any information it receives under subsection (4) concerning the beneficial ownership of securities.

confidential information

(8) After receipt of a demand in writing or machine readable form from an issuer that has received a list of participants under subsection (2), a clearing agency shall provide the issuer with a current list made up as of a date subsequent to the demand showing any change in respect of the securities held for a participant since the date as of which the list under subsection (2) was made up.

supplemental list

(9) An issuer is entitled to obtain free of charge from a clearing agency in any one calendar year four lists of participants under subsection (2) with respect to each class of securities held by the clearing agency, but the issuer shall pay the clearing agency a reasonable amount for

payment for lists

(a) any additional cost attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date, or

(b) any additional list.

(10) An issuer is entitled to presume conclusively that a person named in a list obtained under this section is the owner of the securities of the issuer referred to in the list.

issuer's right to rely on list

SOURCE: Canada Business Corporations Act, ss. 21(3)-(5).

10.15 After submitting a request in writing or machine readable form to a clearing agency, a beneficial owner of a security of an issuer and the owner's agent may during the usual business hours examine a list in intelligible form of the records of the clearing agency that relate to any securities of the issuer held by it made up as of a specific date at a reasonable time after submission of the request and may also make extracts therefrom without charge, and any other person may do so upon payment of a reasonable fee.

Access to clearing agency records

SOURCE: Canada Business Corporations Act, s. 21(3).

Incorrect entry by clearing agency

10.16 (1) Subject to subsection (3), an incorrect entry made in the records of a clearing agency in connection with a transfer or pledge of a security by reason of its error has the same effect as a correct entry.

liability of clearing agency

(2) Subject to subsection (3), a clearing agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records by reason of its error.

correction of error

(3) Where a clearing agency by reason of its error makes an incorrect entry in its records transferring a security of a class to an account of a participant, the clearing agency may, to the extent there are securities of that class in the account, correct the entry in whole or in part without the participant's consent.

liability in extraordinary circumstances

(4) Where a clearing agency is unable to effect a pledge or transfer of a security on its records because of an extraordinary event, it is not liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

SOURCE: New.

Application to rectify records

10.17 (1) Where an entry is alleged to have been incorrectly made or retained in or omitted or deleted from the records of a clearing agency, the clearing agency or an interested person may apply to a court for an order that the records be rectified.

powers of court

(2) On an application under subsection (1), a court may make any order it thinks fit including, without limiting the generality of the foregoing, an order

- (a) determining who is an interested person and the notice to be given to such a person,
- (b) dispensing with notice to any person,
- (c) determining who is entitled to a security held by a clearing agency,
- (d) determining the right of a party to the proceedings to have his name entered or retained in or deleted or omitted from the records of a clearing agency,
- (e) directing that the records of a clearing agency be rectified,
- (f) directing that a clearing agency make an entry in its records to block an account, or
- (g) compensating any person.

SOURCE: Canada Business Corporations Act, s. 236.

Participation by financial institutions

10.18 (1) A registered clearing agency may hold securities for a financial institution that is authorized under the law applicable to it to deliver or transfer any securities held by it into the custody of a clearing agency.

(2) The Commission may by regulation authorize a corporation incorporated by or under an act of Parliament to deliver or transfer any securities held by it into the custody of a clearing agency.

federal institutions

(3) The Commission may by regulation or order approve any aspect of the operating system of a clearing agency that is not inconsistent with this Part.

Commission's supervisory powers

SOURCE: New.

PART 11

MARKET CONDUCT AND REGULATION

11.01 (1) A registrant shall not recommend a trade in a security to a customer unless he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of Suitability requirement

- (a) information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs, and
- (b) any other information known to the registrant.

(2) Subsection (1) does not apply to a registrant in respect of the exceptions

- (a) execution of an unsolicited order for a customer, or
- (b) publication of a research report that recommends generally a trade in a security.

SOURCE: ALI Federal Securities Code, s. 915(a)(3).

11.02 (1) The Commission may prescribe standards for the conduct of a registrant in relation to a customer to prevent Conflicts of interest

- (a) a conflict of interest, or
- (b) any other conduct that would enable a registrant to treat a customer unfairly.

(2) The Commission may prescribe standards for the conduct of a registrant in relation to the custody or lending of any money or security held for a customer. custody or lending of securities

SOURCE: ALI Federal Securities Code, ss. 910, 915(b).

11.03 A registrant who recommends in writing a trade in a specific security shall include with the recommendation a statement as prescribed of any financial or other interest that he, any of his associates or any person who would be an insider within subsection 7.11(1) of the registrant if the registrant were a reporting issuer has directly or indirectly in the security or in a trade in the security. Disclosure of interest in recommendation

SOURCES: Ontario Securities Act, s. 72; Ontario Securities Act, 1978, ss. 39, 40; ALI Federal Securities Code, s. 915(a)(1).

11.04 The Commission may by regulation require a registrant who exercises investment discretion with respect to a customer's account to disclose as prescribed to the customer his Disclosure of policies concerning commissions

polices and practices relating to the payment of commissions for trades in securities.

SOURCE: ALI Federal Securities Code, s. 917(c).

Duty to forward documents

11.05 (1) Where securities of an issuer are registered in the name of but not beneficially owned by a registrant or his nominee, the registrant shall send to the beneficial owner of the securities a copy of any document sent to him or his nominee as registered securityholder forthwith after receipt thereof unless the beneficial owner instructs him in writing that the document need not be sent.

duty to supply documents

(2) A person who sends a document to registered securityholders pursuant to this Act shall furnish to a registrant forthwith upon request sufficient copies of the document to enable him to comply with subsection (1) and, subject to subsection 10.14(5), shall indemnify him for the reasonable costs of doing so.

SOURCES: New; *cf.* Canada Business Corporations Act, s. 147; Ontario Securities Act, s. 80; Ontario Securities Act, 1978, s. 48; ALI Federal Securities Code, ss. 603(i)(9), 604(a).

Confirmation of trade

11.06 (1) Subject to subsection (2), a registrant who trades in a security with or for a customer shall send to him immediately after the completion of the trade a written confirmation containing the information prescribed by the Commission.

periodic statement

(2) The Commission may by regulation permit a registrant who provides a service of a continuous nature to send a periodic statement, at times and containing the information prescribed, instead of a confirmation.

SOURCES: Ontario Securities Act, s. 67; Ontario Securities Act, 1978, s. 35; Securities Exchange Act of 1934, Rule 10b-10; ALI Federal Securities Code, s. 909.

Record of trades by exchange

11.07 (1) A registered securities exchange shall keep a record of each trade made through its facilities showing the time when it took place and any other information prescribed by the Commission.

duty to furnish information

(2) On the request of a person who produces a written confirmation of a trade executed through its facilities, a registered securities exchange shall furnish to him

- (a) at once, if the trade was executed within thirty days of the request, and
- (b) within a reasonable time, if the trade was executed more than thirty days before the request,

details of when the trade took place and of any other matter contained in the confirmation of which the exchange acquired knowledge in the ordinary course of its business.

SOURCES: Ontario Securities Act, s. 141; Ontario Securities Act, 1978, s. 23.

11.08 A registrant who has acted as a broker in connection with a trade in a security shall on the request of the Commission disclose to it the name of the person with or through whom the security was traded.

Disclosure of
other party to
trade

SOURCES: Ontario Securities Act, s. 67(4); Ontario Securities Act, 1978, s. 35(6).

11.09 The Commission may by order deny, restrict or impose conditions on the right of a registrant or other person to call at or telephone a residence for the purpose of trading in securities.

Calls at a
residence

SOURCES: Ontario Securities Act, s. 68; Ontario Securities Act, 1978, s. 36.

11.10 (1) The Commission may by order require a registrant to send to it a copy of each advertisement that he proposes to use in connection with a trade in a security at least seven days before it is used, if the Commission reasonably believes that the registrant's past conduct in connection with such advertisements makes review of them by it necessary for the protection of investors.

Commission
oversight of
advertisements

(2) The Commission may by order prohibit the use of an advertisement sent to it pursuant to subsection (1) or require that it be altered before it is used.

prohibition of
advertisement

(3) In this section "advertisement" includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus, summary prospectus, preliminary prospectus or block distribution circular.

"advertisement"

SOURCE: Ontario Securities Act, 1978, s. 49.

11.11 A person who places an order with a registrant to sell a security that he does not own or, if acting as agent, that he knows his principal does not own shall when he places the order declare that he or his principal, as the case may be, does not own the security.

Short sales

SOURCES: Ontario Securities Act, s. 79; Ontario Securities Act, 1978, s. 47.

Standards for
nonmember
registrants

reporting of
over-the-counter
trades

unlisted trading

Lost and stolen
securities

availability of
information

no constructive
notice

11.12 (1) The Commission may prescribe standards for the conduct of a registrant who is not a member of a registered self-regulatory organization.

(2) The Commission may by regulation require a registrant to keep a record of all trades executed by him other than through the facilities of a registered securities exchange and to file with it a report of the trades in prescribed form.

(3) The Commission may prescribe standards governing trading in a security that has been distributed and is not listed on a registered securities exchange.

SOURCES: Ontario Securities Act, s. 147(g); Ontario Securities Regulations, ss. 73-76; Ontario Securities Act, 1978, s. 139(9).

11.13 (1) The Commission may by regulation require a registrant

- (a) to file with it such information about a missing, lost, counterfeit or stolen security as it prescribes; and
- (b) to submit an inquiry to it for information filed pursuant to paragraph (a) relating to a security
 - (i) which is in the registrant's custody or control,
 - (ii) for which he is responsible, or
 - (iii) in respect of which he is effecting, clearing or settling a trade.

(2) Information filed with the Commission pursuant to paragraph (1)(a) shall be made available to a registrant, financial institution or other prescribed person at once on request.

(3) A failure to comply with paragraph (1)(b) does not affect a person's status as a *bona fide* purchaser of a security.

SOURCE: ALI Federal Securities Code, s. 1009.

PART 12

FRAUD AND MANIPULATION

12.01 No person shall engage in deception or make a misrepresentation in connection with

- (a) a trade in a security or an inducement not to trade a security,
- (b) a solicitation of proxies or other circularization of securityholders,
- (c) a takeover bid,
- (d) a filing or a record or document required to be kept or sent to any person under the Act, or
- (e) a press release or other public statement or advertisement other than a document within paragraph (d), relating to an issuer that is likely to induce a person to trade or not to trade a security of the issuer or any of its affiliates.

Deception and misrepresentation

SOURCES: Criminal Code, s. 320(1)(c), 355(1), 358; Ontario Securities Act, s. 137(1)(b); Ontario Securities Act, 1978, s. 118(1)(b); ALI Federal Securities Code, ss. 1602(a), 1604(a), (c).

12.02 (1) In this section

- (a) “business combination” means an acquisition of all or substantially all the property of one issuer by another or an amalgamation of two or more issuers, and
- (b) “insider” means
 - (i) an issuer in respect of its own securities,
 - (ii) an affiliate of an issuer,
 - (iii) a director, officer or employee of an issuer,
 - (iv) a person who beneficially owns more than ten percent of the equity securities of an issuer or who exercises control or direction over more than ten percent of the votes attached to the securities of an issuer,
 - (v) any other person whose relationship to the issuer gives him access to a material confidential fact, and
 - (vi) a person who is informed of a material confidential fact by a person described in this paragraph or in subsection (2) or (3), including a person described

Insider trading: definitions

in this subparagraph, and who has knowledge that the informant is an insider.

presumption:
business
combination

(2) If one issuer proposes to enter into a business combination with another issuer, an insider specified in subparagraphs (1)(b)(ii) to (vi) of each such issuer is deemed to be an insider of the other issuer.

presumption:
takeover bid

(3) If a person proposes to make a takeover bid for the securities of an issuer or to become an insider specified in subparagraph (1)(b)(iv) of the issuer by other means, an insider specified in subparagraphs (1)(b)(ii) to (vi) of the person is deemed to be an insider of the issuer.

insider trading
and “tipping”
prohibited

(4) No insider of an issuer who knows a material confidential fact relating to the issuer or a security of the issuer shall trade in a security of the issuer or inform another person of the fact unless

- (a) he reasonably believes that the fact is not confidential or that the other party to the trade or the person informed also knows it, or
- (b) he informs the other person in the necessary course of business and reasonably believes the person will not violate this subsection.

confidentiality

(5) A fact ceases to be confidential when it becomes public.

SOURCES: Canada Business Corporations Act, s. 125; British Columbia Securities Act, s. 111; Ontario Securities Act, 1978, s. 75; California Corporate Securities Law of 1968, s. 25402; ALI Federal Securities Code, ss. 1603, 1724(c).

Speculation by
insiders: short
sales

12.03 (1) No insider of a reporting issuer referred to in subparagraphs 12.02(1)(b)(i) to (iv) shall sell, directly or indirectly, a security of the issuer where

- (a) he does not own the security or a right to acquire it, or
- (b) the sale is to be consummated by the delivery of a security borrowed by or for the insider,

unless the trade is exempted by regulation.

puts and calls

(2) No insider of a reporting issuer referred to in subparagraphs 12.02(1)(b)(i) to (iii) shall trade, directly or indirectly, a put or a call in respect of a security of the issuer.

SOURCES: Canada Corporations Act, s. 100.6; Canada Business Corporations Act, s. 124; ALI Federal Securities Code, s. 911(b).

Prohibited
representations:
Commission
endorsement

12.04 (1) No person shall represent that the Commission or any other government agency has endorsed the merits of a

security, the desirability of a trade or the qualifications of a person.

(2) No person shall represent

(a) that he is offering to trade in a security “at the market” or at a price related to the market price unless he reasonably believes that a market for the security exists that is not made, created or controlled by him or his employer, an affiliate or a person for whom he is acting in the transaction, or

offers “at the market”

(b) that he or any other person will resell or repurchase a security or refund any of the purchase price of a security in which he is trading, except a security that carries or is accompanied by an obligation of the issuer to redeem or repurchase or a right of the owner to require the issuer to do so,

promise to resell, repurchase or refund

unless the representation is permitted by regulation.

(3) No person who intends to trade a security shall give any undertaking relating to the future value or price of the security, unless the undertaking is permitted by regulation.

representations of future value

SOURCES: Ontario Securities Act, ss. 69, 77; Ontario Securities Act, 1978, ss. 37, 45; ALI Federal Securities Code, ss. 1605, 1609(e).

12.05 (1) No person shall tout a security, unless

Touting

(a) he concurrently discloses the source of any consideration received or receivable by him or his employment by the person for whom he touts, or

(b) the person to whom he describes the security knows he is touting it.

(2) For the purposes of this section a person touts a security when he describes it to another, to whom he does not offer to sell it, for a consideration received or receivable directly or indirectly from the issuer of the security, any other person interested in trading the security, a broker, dealer, underwriter or adviser, or an affiliate of any such person.

touting defined

(3) Notwithstanding subsection (2), a person who receives from another person the usual remuneration for preparing or publishing an advertisement that clearly appears to be a statement of the other person published at the other person’s expense does not tout a security.

exception

SOURCE: ALI Federal Securities Code, s. 1607.

12.06 No person shall

Wash trading

(a) effect a trade in a security that involves no change in its beneficial ownership,

- (b) enter an order for the purchase of a security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the sale of the security has been or will be entered by or for the same person or a different person, or
- (c) enter an order for the sale of a security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the purchase of the security has been or will be entered by or for the same person or a different person,

where it is reasonable to believe that the trade will create a false or misleading appearance of active trading in the security or a false and misleading appearance with respect to the market price of the security.

SOURCES: Criminal Code, s. 340; ALI Federal Securities Code, s. 1609(b).

Manipulation
by trading

12.07 Subject to section 12.11, no person shall

- (a) purchase a security of an issuer where the effect of the purchase is to raise the price of the security with intent to induce the purchase of a security of the issuer or its affiliate by another person,
- (b) sell a security of an issuer where the effect of the sale is to depress the price of the security with intent to induce the sale of a security of the issuer or its affiliate by another person, or
- (c) purchase or sell a security of an issuer where the effect of the purchase or sale is to create actual or apparent active trading with intent to induce the purchase or sale of a security of the issuer or its affiliate by another person.

SOURCES: Criminal Code, s. 338(2); ALI Federal Securities Code, s. 1609(c).

Short tendering

12.08 No person shall pursuant to a takeover bid

- (a) tender securities for his own account unless
 - (i) he owns the number of securities tendered, or
 - (ii) he owns a right to acquire the number of securities tendered and exercises it and delivers the securities upon acceptance of his tender; or
- (b) tender or guarantee the tender of securities on behalf of another person unless
 - (i) he has possession of the number of securities tendered or guaranteed,
 - (ii) he reasonably believes that the other person owns the number of securities tendered or guaranteed

and will deliver them to him as soon as reasonably possible for the purpose of tender, or

- (iii) he reasonably believes that the other person owns a right to acquire the number of securities tendered or guaranteed and intends to exercise it in order to deliver the securities for the purpose of tender.

SOURCES: Securities Exchange Act of 1934, Rule 10b-4; ALI Federal Securities Code, s. 606(i); Montreal Stock Exchange, Rule 12153.1; Toronto Stock Exchange, By-Law 23.07.

12.09 No person who intends to profit from the rise or fall in the price of a security shall agree to purchase or sell the security where

- (a) he does not intend to acquire or sell it, or
- (b) he does not intend to make or receive delivery of it and he fails to make or receive delivery.

Gaming in securities ("bucketing")

SOURCE: Criminal Code, s. 341.

12.10 (1) No registrant or employee of a registrant shall effect trades that are excessive in volume or frequency with or for a customer in respect of whose trading he is in a position to exercise determinative influence by reason of the customer's willingness to accept his recommendations.

Churning

(2) No person who has discretionary authority over or is a trustee for an account of another shall effect trades that are excessive in volume or frequency.

discretionary authority

(3) For the purposes of this section, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the registrant, employee or other person in relation to the size of the customer's account, the size and character of the account, the needs and objectives of the customer as ascertained on reasonable inquiry and the pattern of trading in the account.

excessive trading

SOURCE: ALI Federal Securities Code, s. 1606.

12.11 The Commission may by regulation

Manipulation in distribution and stabilization

- (a) define and prohibit manipulation in connection with a distribution, and
- (b) establish conditions for or prohibit trading in a security for the purpose of pegging, fixing or stabilizing the price of a security of the same issuer or its affiliates.

SOURCE: ALI Federal Securities Code, ss. 1609(d), 1610.

PART 13

CIVIL LIABILITY

13.01 (1) In this Part a trade is impersonal if it is effected in a manner that makes the matching of buyers and sellers substantially fortuitous and it is direct if it is not effected in such a manner, but the fact that a party to a trade is a dealer does not alone make it direct.

Definitions:
direct and
impersonal
trades

(2) Where rescission is available under this Part, a plaintiff

- (a) may return or recover a security of the same class and series as the security purchased or sold by him, and
- (b) has a duty reasonably to mitigate his loss as of the time, proved by the defendant, when all material facts relating to the violation become public unless it is proved that the plaintiff acquired knowledge of the facts at another time, in which case as of that time.

extension of
meaning of
rescission

SOURCE: New; *cf.* ALI Federal Securities Code, ss. 1702, 1703, 1703(h).

13.02 (1) An issuer, selling securityholder or underwriter who trades a security in a distribution contrary to section 5.02 is liable for rescission or damages to any person who purchases the security in the distribution.

Failure to file
prospectus:
issuer and
underwriter

(2) A person required to be registered under Part 8, other than a person specified in subsection (1), who trades a security in a distribution contrary to section 5.02 is liable to his purchaser for rescission or damages.

selling group
members

(3) Notwithstanding subsection 13.01(2), for the purposes of this section

definition of
“rescission”

- (a) “rescission” means recovery by a plaintiff-purchaser, who tenders a security of the same class and series, of the price paid for the security less any return received on it, and
- (b) the measure of damages is the amount specified in paragraph (a) less the value of the security on the date of judgment.

(4) Where a defendant proves that he acted honestly and reasonably and that his violation was inadvertent, the remedy specified in subsection (3) may be modified as appropriate in the circumstances.

modification of
remedy

SOURCES: Ontario Bill 7 (2d reading), s. 130; ALI Federal Securities Code, ss. 1702(a)(1), (d), (e), 2007.

Insider trading
in direct trade

13.03 (1) A person who trades directly in a security contrary to section 12.02 is liable to his purchaser or seller for rescission or damages.

tipping

(2) A person who informs another of a fact contrary to section 12.02 is liable for damages to a person who trades directly in a security with the person whom he informed or with any other person who was informed, directly or indirectly, of the fact as a result of his informing, if the person informed or in receipt of the fact himself trades contrary to section 12.02.

defence

(3) No person is liable under subsection (1) or (2) to a person whom he proves traded with knowledge or in circumstances in which he should have had knowledge of the confidential fact.

accountability
to issuer

(4) An insider specified in paragraphs 12.02 (1)(b)(ii) to (v) who violates section 12.02 in connection with a direct trade is accountable to the issuer the securities of which are traded for any direct benefit or advantage that is received or receivable by him as a result of the violation.

SOURCES: Canada Business Corporations Act, s. 125(5); Ontario Securities Act, s. 113; Ontario Securities Act, 1978, s. 131; ALI Federal Securities Code, s. 1703, 1724(c).

Impersonal
trades: insider
trading and
tipping

13.04 (1) A person who, in connection with an impersonal trade in a security,

- (a) trades contrary to section 12.02, or
- (b) informs another person of a fact contrary to section 12.02, if the person informed or a person who was informed of the fact, directly or indirectly, as a result of his informing trades contrary to section 12.02,

is liable for damages to a person who purchases or sells a security of the same class and series on the day when the defendant or a person informed of the fact first trades or on any day thereafter up to and including the day on which the material facts relating to the violation become public.

defence

(2) No person is liable under subsection (1) to a person whom he proves traded with knowledge or in circumstances in which he should have had knowledge of the confidential fact.

comparative
causation
defence

(3) A defendant is not liable for damages under this section to the extent that he proves that the plaintiff's loss was not caused by the violation.

limit on liability

(4) A defendant is not liable under this section to pay in damages more than two times the amount that he would be required to pay if his violation were in connection with a direct trade.

(5) If the aggregate damages in an action under this section would exceed the limitation under subsection (4), the damages awarded pursuant to that subsection shall be prorated among the plaintiffs, including the members of a class in a class action, to the extent that the cost of proration is warranted in relation to the amount to be awarded to individual plaintiffs.

(6) If the cost of the proration under subsection (5) is unwarranted to any extent, the remaining damages shall be awarded to the issuer unless

- (a) the action is brought pursuant to section 13.07 or subsection 13.09(1),
- (b) the issuer is a defendant, or
- (c) under the circumstances, including the defendants' securityholding in the issuer, such an award would be inequitable.

(7) If the cost of proration under subsection (5) is unwarranted and subsection (6) is not applicable, the remaining damages shall be awarded to the contingency fund established pursuant to section 9.13.

(8) An insider specified in paragraphs 12.02(1)(b)(ii) to (v) who violates section 12.02 in connection with an impersonal trade is accountable to the issuer the securities of which are traded for any direct benefit or advantage that is received or receivable by him as a result of the violation.

SOURCES: Canada Business Corporations Act, s. 125(5); Ontario Securities Act, s. 113; Ontario Securities Act, 1978, s. 131; ALI Federal Securities Code, ss. 1703, 1711(j), 1724(c).

13.05 (1) Where a prospectus as of the date of acceptance or an amended prospectus as of the date the amendment is filed contains a misrepresentation or omits a material fact that is required to be included and where a prospectus is not amended as required by section 5.12, the issuer, selling securityholder and an underwriter who signs the prospectus are liable for rescission or damages to any person who purchases a security covered by the prospectus in the distribution.

(2) In the circumstances specified in subsection (1),

- (a) a director of the issuer as of the specified date,
- (b) a person named with his consent in the prospectus or amended prospectus as about to become a director,
- (c) the principal executive officer, financial officer and accounting officer of the issuer as of the specified date, and

(d) an expert with respect to a statement or report made by him and included with his consent in the prospectus or amended prospectus

are liable for damages to a person who purchases a security covered by the prospectus in the distribution.

defences:
knowledge of
truth

correction

failure to amend
prospectus

defences of
persons other
than issuer

(3) No person is liable under this section to a person whom he proves purchased with knowledge of the misrepresentation, the fact omitted or the fact requiring an amendment under section 5.12.

(4) No person is liable under this section if he proves that the misrepresentation or omission was corrected by an amendment to the prospectus unless the plaintiff purchased before the contents of the amendment became public or justifiably relied on the misrepresentation or omission.

(5) No person, other than the issuer, is liable under this section for a violation of section 5.12 if he proves that he did not know and had no reasonable ground to believe that there was such a violation.

(6) No person, other than the issuer or selling securityholder, is liable under this section if he proves that

- (a) before the acceptance of the prospectus or if the action relates to an amended prospectus the date of the amendment, he resigned or took the necessary steps to resign from or ceased or refused to act in any office or capacity with the issuer in which he was described in the prospectus and advised the Commission and the issuer or selling securityholder in writing that he so acted and that he would not be responsible for the prospectus;
- (b) the prospectus was accepted or the amendment was filed without his knowledge and that on becoming aware of its acceptance or filing he forthwith advised the Commission and the issuer or selling securityholder in accordance with paragraph (a);
- (c) with respect to any part of the prospectus not purporting to be made on the authority of an expert or of a public official document or statement and not purporting to be a copy of or extract from a report or valuation of an expert he had, after reasonable investigation, reasonable ground to believe and did believe at the time specified in paragraph (a) that it did not contain a misrepresentation or omit a material fact;
- (d) with respect to a part of the prospectus purporting to be made on the authority of an expert other than himself or to be a copy of or extract from a report or valuation

of an expert other than himself or from a public official document he did not know and had no reasonable ground to believe at the time specified in paragraph (a) that the part contained a misrepresentation or omitted a material fact or that the part did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert or from the official document; or

(e) with respect to a part of the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or extract from his own report or valuation as an expert

- (i) he had, after reasonable investigation, reasonable ground to believe and did believe that it did not contain a misrepresentation or omit a material fact, or
- (ii) the part did not fairly represent his statement or was not a fair copy of or extract from his report or valuation and on acquiring knowledge of the unfair use of his statement, report or valuation he forthwith advised the Commission and the issuer or selling securityholder in writing that such use had been made and that he would not be responsible for that part of the prospectus.

(7) An issuer is entitled to the defences specified in paragraphs (6)(c) and (d) in respect of required information included in its prospectus concerning another issuer that is not affiliated with it and to all the defences in this section in respect of a prospectus for a distribution that is not for its account or benefit.

(8) A selling securityholder is entitled to the defence in paragraph (6)(c) in respect of required information derived from documents or reports of the issuer.

(9) An underwriter is not liable under this section for more than the total public offering price represented by the portion of the distribution underwritten by him.

SOURCES: Ontario Securities Act, s. 142; Ontario Securities Act, 1978, s. 126; ALI Federal Securities Code, ss. 1704, 1706.

13.06 (1) Where a takeover bid circular or an amendment to a circular as of the date on which it is sent to offerees contains a misrepresentation or omits a material fact that is required to be included and where a takeover bid circular is not amended to correct a statement contained in it that has become a misrepresentation by reason of an event, that is not public,

issuer's defences

selling securityholder's defence

limit on underwriter's liability

False takeover bid circular

subsequent to the date of the circular, the offeror is liable for rescission or damages to a person who accepts the takeover bid.

persons liable

- (2) In the circumstances specified in subsection (1),
 - (a) an underwriter or other registrant who signs the takeover bid circular,
 - (b) a director of the offeror as of the specified date,
 - (c) a person named with his consent in the takeover bid circular or amended circular as about to become a director of the offeror,
 - (d) the principal executive officer, financial officer and accounting officer of the offeror as of the specified date, and
 - (e) an expert with respect to a statement or report made by him and included with his consent in the takeover bid circular or amended circular

are liable for damages to a person who accepts the takeover bid.

defence

- (3) No person is liable under this section to a person whom he proves purchased with knowledge of the misrepresentation, the fact omitted or the subsequent event.

correcting amendment

- (4) No person is liable under this section if he proves that the misrepresentation or omission was corrected by an amendment to the takeover bid circular after which offerees had a reasonable right to withdraw securities previously deposited by them.

subsequent event

- (5) No person, other than the offeror, is liable under this section for a failure to correct a statement in a takeover bid circular that becomes a misrepresentation by reason of a subsequent event if he proves that he did not know and had no reasonable ground to believe that there was such a misrepresentation.

prospectus defences

- (6) No person referred to in subsection (2) is liable under this section if he proves that he would be entitled to a defence in subsection 13.05(6) if the takeover bid circular were a prospectus.

offeror's defences

- (7) An offeror is not liable under this section if he proves that he would be entitled to a defence available to an issuer under subsection 13.05(7) or to a selling securityholder under subsection 13.05(8) if the takeover bid circular were a prospectus.

SOURCES: Canada Business Corporations Act, s. 198(3); Canada Business Corporations Regulations, s. 67(2); Ontario Securities Act, s. 144a; Ontario Securities Act, 1978, s. 127.

13.07 (1) Where a registration statement filed under Part 4 contains, as of the date of filing, a misrepresentation or omits a material fact required to be included, the issuer is liable [in an action by the Commission*] for damages to a person who trades a security of the issuer after the registration statement is filed.

False registration statement

(2) An issuer is not liable under subsection (1) to a person whom it proves traded with knowledge or in circumstances in which he should have had knowledge of the misrepresentation or the fact omitted.

defence

(3) An issuer is not liable under subsection (1) if it proves that

further defences

- (a) the misrepresentation or omission was corrected by an amendment to the registration statement or by a subsequent filing, unless the plaintiff traded before the correction became public;
- (b) with respect to any part of the registration statement not purporting to be made on the authority of an expert or of a public official document or statement and not purporting to be a copy of or extract from a report or valuation of an expert it had, after reasonable investigation, reasonable ground to believe and did believe before the filing of the registration statement that the registration statement did not contain a misrepresentation or omit a material fact or document; or
- (c) with respect to a part of the registration statement purporting to be made on the authority of an expert or to be a copy of or extract from a report or valuation of an expert or from a public official document it did not know and had no reasonable ground to believe at the time specified in paragraph (b) that the part contained a misrepresentation or omitted a material fact or that the part did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert or from the official document.

(4) An issuer is not liable for damages under this section to the extent it proves that the plaintiff's loss was not caused by the misrepresentation or omission.

comparative causation defence

(5) Damages awarded under this section shall not exceed the greatest of

limit on liability

* Two of the authors, Warren M. H. Grover and John L. Howard, believe that an action under this section should be available only at the instance of the Commission. *See* section 13.07, Commentary.

- (a) \$100,000,
- (b) one percent, to a maximum of \$1 million, of the issuer's gross revenues in its most recent complete financial year preceding the bringing of the action, or
- (c) if the issuer trades in a security of its own issue during the period of the violation, its profit from the trading, unless the plaintiff proves that the issuer knowingly made a misrepresentation.

proration of
damages

(6) Damages awarded under this section shall be prorated as specified in subsections 13.04(5) to (7).

SOURCE: ALI Federal Securities Code, s. 1704.

False directors'
circular

13.08 (1) Where a directors' circular or a notice under section 7.25 or an amendment to a directors' circular as of the date on which it is sent to offerees contains a misrepresentation or omits a material fact that is required to be included, a director of the offeree issuer as of that date and any other person who signs the circular is liable for damages to an offeree who trades a security of the offeree issuer or who refrains from accepting the takeover bid to which the directors' circular relates.

defence

(2) No person is liable under subsection (1) to a person whom he proves traded or refrained from accepting a takeover bid with knowledge or in circumstances in which he should have had knowledge of the misrepresentation or the fact omitted.

further defences

(3) No person is liable under subsection (1)

- (a) if he proves that the misrepresentation or omission was corrected by an amendment to the directors' circular unless the plaintiff traded before the contents of the amendment became public, or
- (b) if he proves that he indicated in the directors' circular his disagreement with the misrepresentation or indicated therein the facts that were omitted.

prospectus
defences

(4) No person is liable under this section if he proves that he would be entitled to a defence in subsection 13.05(6) if the directors' circular were a prospectus.

comparative
causation
defence

(5) No person is liable for damages under this section to the extent that he proves that the plaintiff's loss was not caused by the misrepresentation or omission.

(6) Damages awarded against a defendant under this section shall not exceed the greater of

- (a) \$100,000, or

(b) if the defendant trades in a security of the offeree issuer during the period of the violation, his profit from the trading,

unless the plaintiff proves that the defendant knowingly made a misrepresentation.

(7) Damages awarded under this section shall be prorated as specified in subsections 13.04(5) to (7).

proration of damages

SOURCES: Canada Business Corporations Act, s. 198(3); Ontario Securities Act, s. 144a; Ontario Securities Act, 1978, s. 127.

13.09 (1) Where an annual report under section 7.01, a quarterly report under section 7.02 or a press release under section 7.03 as of the date it is filed, or the date on which it becomes available to the public if later than the date of filing, contains a misrepresentation made knowingly or recklessly by the issuer, the issuer is liable [in an action by the Commission*] for damages to a person who, after the report or release is filed and becomes available to the public, trades a security issued by it.

False annual report, quarterly report and press release

(2) Subsection (1) applies to a prospectus or takeover bid circular where the plaintiff

prospectus and takeover bid circular

- (a) sells a security of the issuer or offeror, or
- (b) purchases a security of the issuer or offeror,

other than a security covered by the prospectus or takeover bid circular.

(3) Where a block distribution circular as of the date of acceptance contains a misrepresentation made knowingly or recklessly, the selling securityholder is liable [in an action by the Commission*] for damages to a person who, after the date of acceptance, purchases a security of a class covered by the circular.

block distribution circular

(4) A person who knowingly or recklessly violates paragraph 12.01(b) or 12.01(e) by means of a misrepresentation is liable [in an action by the Commission*] for damages to a person who, after the violation, trades a security of the issuer to whom the document, release or other advertisement relates.

proxy circular and press release

(5) No person is liable under this section to a person whom he proves traded with knowledge of the misrepresentation.

defence

* Two of the authors, Warren M. H. Grover and John L. Howard, believe that an action under this section should be available only at the instance of the Commission. See section 13.07, Commentary.

defence of
correctioncomparative
causation
defence

limit on liability

market
manipulation

burden of proof

defence

measure of
damagesViolation of
proxy
requirements

(6) No person is liable under this section if he proves that the misrepresentation was corrected by a subsequent filing, press release or other advertisement unless the plaintiff traded before the contents of the subsequent filing or publicity became public.

(7) No person is liable for damages under this section to the extent that he proves that the plaintiff's loss was not caused by the misrepresentation.

(8) Damages under this section shall be limited as specified in subsection 13.07(5) and prorated as specified in subsections 13.04(5) to (7).

SOURCE: ALI Federal Securities Code, ss. 1705, 1706, 1707.

13.10 (1) A person who trades a security contrary to section 12.06 or 12.07 is liable for damages to a person who trades a security of the class involved after the violation.

(2) A plaintiff who trades more than thirty days after the last act constituting part of a violation specified in subsection (1) bears the burden of proving that he traded at a price affected by the violation.

(3) No person is liable under subsection (1) to a person whom he proves traded with knowledge of the violation.

(4) For the purposes of this section the measure of damages is the difference between the price at which the plaintiff traded and the market value of the security immediately before the violation but damages shall be reduced to the extent the defendant proves that the price differential was not caused by the violation.

SOURCE: ALI Federal Securities Code, ss. 1710(a)-(c).

13.11 (1) Where a person violates sections 7.05 to 7.09 or paragraph 12.01(b) or engages in conduct that is oppressive or unfairly prejudicial to or unfairly disregards the interests of a securityholder in connection with a solicitation of proxies, the issuer, a holder of a security in respect of which proxies have been or are to be solicited or another interested person may apply to a court and the court may make any order it thinks fit and, without limiting the generality of the foregoing, the court may

(a) restrain

(i) a violation or further violation,

(ii) the holding of the meeting to which a solicitation relates,

(iii) the use of proxies solicited or given in violation of the Act, or

- (iv) any person from implementing or acting on any resolution passed at the meeting;
- (b) require compliance with any provision of the Act;
- (c) set aside a resolution or action taken to implement a resolution passed at the meeting to which a violation or the other conduct is related; or
- (d) award damages against a defendant for any loss that the plaintiff proves was caused by his violation.

(2) A person who trades a security may not obtain damages under this section to the extent that he has an action under section 13.03 or 13.09 as a result of conduct specified in subsection (1). damages: exclusive remedies

SOURCES: Canada Business Corporations Act, ss. 148, 234; ALI Federal Securities Code, ss. 1713(a), (c).

13.12 (1) Where a person violates section 7.13, sections 7.20 to 7.25 or paragraph 12.01(c) or engages in conduct that is oppressive or unfairly prejudicial to or unfairly disregards the interests of a securityholder in connection with a takeover bid, the issuer of a security that is the subject of a takeover bid or a proposed takeover bid or the acquisition of which is required to be reported pursuant to section 7.13, an offeree or other securityholder of the issuer, an offeror or person who proposes to make a takeover bid or another interested person may apply to a court and the court may make any order it thinks fit and, without limiting the generality of the foregoing, the court may Violation of accelerated reporting and takeover bid requirements

- (a) restrain
 - (i) a violation or further violation,
 - (ii) the voting of securities acquired in connection with a violation, or
 - (iii) the implementation of a resolution passed as a result of their having been voted;
- (b) require compliance with any provision of the Act;
- (c) vary the dates referred to in sections 7.20 to 7.22;
- (d) require a person to dispose of securities acquired in connection with a violation;
- (e) set aside a resolution or action taken to implement a resolution passed as a result of the voting of securities acquired in connection with a violation; or
- (f) award damages against a defendant for any loss that the plaintiff proves was caused by his violation.

(2) A person who trades a security may not obtain damages under this section to the extent that he has an action under section 13.06 or 13.08 or subsection 13.09(1) as a result of conduct specified in subsection (1). damages: exclusive remedies

SOURCES: Canada Business Corporations Act, s. 198(3); Ontario Securities Act, 1978, ss. 129, 130; ALI Federal Securities Code, ss. 1713(b), (c).

Churning

13.13 A person who effects an excessive number of trades contrary to section 12.10 is liable to his customer for

- (a) his commission and profit,
- (b) interest paid by the customer, and
- (c) such additional damages as the court thinks fit on consideration of the factors in subsection 12.10(3).

SOURCE: ALI Federal Securities Code, s. 1717.

Improper market conduct

13.14 A person who violates subsection 5.04(1) or section 11.01, 11.02, 11.03, 11.06, 11.11 or 12.04 is liable to the person with whom he trades or to his customer in the trade for

- (a) rescission as defined in subsection 13.02(3) and modified pursuant to subsection 13.02(4), or
- (b) any loss that the plaintiff proves was caused by the violation.

SOURCES: Ontario Securities Act, ss. 71, 78; Ontario Securities Act, 1978, ss. 46, 133; Saskatchewan Securities Act, s. 152; ALI Federal Securities Code, s. 1715.

Failure to provide information to selling securityholder

13.15 A person who fails to comply with an order of the Commission made under section 5.07 is liable to the person proposing to make the distribution for any loss that he proves was caused by the failure to comply.

SOURCE: ALI Federal Securities Code, s. 1712(a).

Implied cause of action for violation of Act

13.16 (1) A court may imply a cause of action where a provision of the Act, a regulation promulgated pursuant to it or a by-law of a self-regulatory organization for which civil liability is not expressly provided in this Part is violated, if

- (a) the implied action is not inconsistent with the conditions or restrictions, including a limitation on the damages that may be awarded, on an action that is expressly created, and
- (b) the provision, regulation or by-law is intended to protect a class of persons to which the plaintiff belongs against the kind of harm alleged.

(2) The rights of action conferred by this Part are in addition to and do not derogate from any rights at common law or equity.

SOURCES: Ontario Securities Act, ss. 65(7), 100a(5); Ontario Securities Act, 1978, ss. 126(10), 127(11); ALI Federal Securities Code, ss. 1721, 1722.

common law rights and remedies retained

13.17 (1) A person who knowingly causes, commands, induces, procures or gives substantial assistance to conduct by another person that creates liability under this Part is liable to the same extent as the other person but the liability of a person under this subsection is limited to the same extent as if he were primarily liable for the violation.

Aiding and abetting

(2) A registrant who controls another person who violates a provision of this Act is liable to the same extent as the other person unless he proves that

failure of registrant to supervise

(a) he did not control the other person when the acts constituting the violation were committed, or

(b) he had reasonable ground to believe the other person's conduct was not a violation of a provision of or a duty under this Act.

(3) For the purposes of subsection (2), a person controls another person when he has the power, directly or indirectly, to exercise a determinative influence over management, policies or acts of the other person.

definition of "control"

SOURCE: ALI Federal Securities Code, ss. 230(a), 1724(a), (b).

13.18 (1) Where two or more persons participate in a violation that gives rise to liability under this Part, their liability is joint and several.

Joint and several liability

(2) In an action for contribution arising out of a violation of this Act a court may, on consideration of the relative responsibility of each person who is or, if sued, would have been liable under this Part to a plaintiff as a result of the violation, order any such person to pay as contribution to another the amount, if any, that the court thinks just, including a complete indemnity, up to the maximum amount for which he may be liable to the plaintiff.

contribution among violators

SOURCES: Ontario Securities Act, 1978, ss. 126(8), 127(8); ALI Federal Securities Code, ss. 1724(d), (f).

13.19 (1) An action for rescission under section 13.02 or 13.14 may be commenced only within six months after the last act constituting the violation or other conduct on which the action is based.

Limitation periods: six months

(2) An action for damages under section 13.02 or 13.15 may be commenced only within two years after the last act constituting the violation or other conduct on which the action is based.

two years after violation

(3) An action under section 13.03, 13.04, 13.05, 13.06, 13.07, 13.08, 13.09, 13.10 or 13.13 may be commenced only within two years after the plaintiff learns or in the exercise of

two years after knowledge

reasonable diligence should learn of the facts on which the action is based.

six years (4) Notwithstanding subsection (3), an action under section 13.05 or subsection 13.09(3) may be commenced only within six years after the date on which a prospectus or block distribution circular is accepted.

six years (5) Notwithstanding subsection (3), an action under section 13.07 or subsection 13.09(1) may be commenced only within six years after the date on which a document is filed.

six years (6) Notwithstanding subsection (3), an action under section 13.06 or 13.08 may be commenced only within six years after the date on which a takeover bid circular or directors' circular is sent to offerees.

six years (7) Notwithstanding subsection (3), an action under section 13.03, 13.04 or subsection 13.09(4) may be commenced only within six years after the plaintiff's trade.

six years (8) Notwithstanding subsection (3), an action under section 13.10 or 13.13 may be commenced only within six years after the last act constituting the violation or other conduct on which the action is based.

other actions (9) Any other action under this Part may be commenced only within the time specified in subsections (1) to (7) for the action that is most nearly analogous.

SOURCES: Canada Business Corporations Act, s. 125(6); Ontario Securities Act, ss. 71, 113(2); Ontario Securities Act, 1978, ss. 133, 134, 135; ALI Federal Securities Code, ss. 1727(a), (b), (f).

Rescission offer by seller **13.20** (1) If a seller of a security who violates a provision of this Act or a person acting on his behalf makes an offer, open for thirty-five days and conditional only upon return of the security sold, to all purchasers of the security from him in direct trades to refund the price paid for the security less any return received by them on it, a purchaser may not bring an action under this Part in respect of the violation to which the offer relates, unless

- (a) he initiated the action before he received the offer,
- (b) he did not receive the offer,
- (c) he received the offer at a time when he did not own at least as many securities of the class and series as he bought and he rejected it in writing within thirty-five days of its date, or
- (d) the offer does not comply with subsection (3).

(2) If a purchaser of a security who violates a provision of this Act or a person acting on his behalf makes an offer, open for thirty-five days and conditional only upon restoration of the price received less any return received by him on the security, to all sellers of the security to him in direct trades to restore as many securities of the class and series as he purchased, a seller may not bring an action under this Part in respect of the violation to which the offer relates, unless

- (a) he initiated the action before he received the offer,
- (b) he did not receive the offer,
- (c) he rejected the offer in writing within thirty-five days of its date, or
- (d) the offer does not comply with subsection (3).

(3) An offer under this section shall be in writing, shall contain the information prescribed by the Commission, and shall be filed with the Commission when it is sent to the offerees.

(4) This section does not apply if an offer is accepted but the contract is not performed within thirty days of the acceptance.

(5) An offer under this section is not subject to Part 5 and is not a takeover bid within section 7.19.

SOURCE: ALI Federal Securities Code, s. 1727(g).

rescission offer
by purchaser

form, contents
and filing of
offer

lapse of offer

offer not a
distribution or
takeover bid

PART 14

ENFORCEMENT

14.01 (1) The Commission may in writing appoint a person to conduct an investigation to ascertain whether any person has violated, is violating or is about to violate a provision of this Act, a regulation under it or a by-law or for any other similar purpose in furtherance of the administration of the Act.

Fact-finding investigations

(2) A person appointed by the Commission pursuant to subsection (1) may issue a subpoena or other request or summons requiring a person to attend at a specified time and place, to testify to all matters relating to the subject of an investigation and to produce all records relating to the subject of the investigation that are in his possession or under his control, whether they are located in or outside of Canada, and any such person may be summoned from any place.

subpoena

(3) A person appointed by the Commission pursuant to subsection (1) may compel a person to give evidence on oath, affirmation or otherwise as he thinks necessary, orally or in writing, and may administer an oath or affirmation at any place.

testimony under oath

(4) For the purposes of an investigation under this section, a person authorized by a court may enter any premises in which there is reason to believe that evidence relating to the subject of the investigation may be found, may examine anything on the premises and may copy or remove any records, securities or other property reasonably related to the subject of the investigation.

search and seizure

(5) A person in possession or control of any premises or things shall permit a person acting pursuant to authorization under subsection (4) to enter the premises, to examine anything on them and to copy or remove any records, securities or other property.

compliance with court authorization

(6) Nothing in this section shall be interpreted to affect the privilege that exists in respect of a solicitor and his client.

solicitor-client privilege

(7) Where an interested person claims that any records, securities or other property about to be copied or removed are not reasonably related to the subject of the investigation or contain privileged information, the person acting pursuant to authorization under subsection (4) shall place the records, securities or other property in a sealed container and deliver

determination of privilege re seized materials

the container to a court and the court shall determine the claim of the interested person.

return,
inspection and
copying of
records

(8) Records, securities and other property taken under subsection (4) shall be returned to the premises from which they were removed within sixty days after they were taken or at a later time agreed to by the person from whom they were taken, and so long as they are retained under this section they may be inspected during normal business hours by and copies shall be made at the Commission's expense for the person from whom they were taken.

right to counsel

(9) A person who gives evidence in an investigation under this section may be represented by counsel.

incriminating
statements

(10) No person is excused from attending, giving evidence or producing documents and records under this section by reason only that the evidence tends to incriminate him or subject him to any proceeding or penalty, but no such evidence shall be used or is receivable against him in any proceeding thereafter instituted against him under an act of Parliament, other than a prosecution for perjury in giving the evidence or a prosecution under section 122 or 124 of the *Criminal Code* in respect of such evidence.

closed hearings

(11) An investigation under this section shall be held *in camera*.

report

(12) A person appointed by the Commission pursuant to subsection (1) shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and material in his possession relating to the investigation.

publication of
report

(13) The Commission may publish a report or other information concerning an investigation under this section, but if it intends to do so it shall

- (a) provide a person against whom an adverse finding is to be made with notice of the finding and an opportunity to be heard in person or by counsel, and
- (b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

SOURCES: Canada Business Corporations Act, ss. 226, 229; Combines Investigation Act, ss. 10(1)(4); Income Tax Act, s. 232; Inquiries Act, ss. 7-8; Ontario Securities Act, ss. 21-25; Ontario Securities Act, 1978, ss. 11-15; ALI Federal Securities Code, ss. 1806(a), (c)-(e).

14.02 (1) The Commission may conduct an inquiry to aid in the prescription of regulations under this Act or to obtain information as a basis for recommending legislation relating to the Act or its subject matter.

Policy inquiry

(2) The Commission may exercise the powers specified in subsections 14.01(2) and (3) in relation to an inquiry under this section.

Commission's powers

(3) A person who gives evidence in an inquiry under this section may be represented by counsel.

right to counsel

(4) No person is excused from attending, giving evidence or producing documents and records under this section by reason only that the evidence tends to incriminate him or subject him to any proceeding or penalty, but no such evidence shall be used or is receivable against him in any proceeding thereafter instituted against him under an act of Parliament, other than a prosecution for perjury in giving the evidence or a prosecution under section 122 or 124 of the *Criminal Code* in respect of such evidence.

incriminating statements

(5) An inquiry under this section may be conducted in public, but a person who is likely to receive adverse publicity as a result of the inquiry being public shall be afforded, if practicable, a reasonable opportunity to state his position on the record in the inquiry.

adverse publicity in open hearing

(6) The Commission may publish a report or other information concerning an inquiry under this section but a person who is likely to receive adverse publicity as a result of such publication shall be afforded, if practicable, advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

publication of report

SOURCES: Canada Business Corporations Act, s. 226; Ontario Securities Act, ss. 21-25; Ontario Securities Act, 1978, ss. 11-15; ALI Federal Securities Code, ss. 1806(b)-(e).

14.03 (1) The Commission may at any time appoint a person in writing to examine the financial affairs of a registrant and to prepare such financial or other reports as the Commission requires.

Examination of registrant's affairs

(2) A person appointed by the Commission pursuant to subsection (1) may examine all books of account, securities, cash, bank accounts and other records of the registrant whose affairs are to be examined.

powers of examiner

(3) Subject to subsections 14.01(6) and (7), no person shall refuse entry to a person appointed pursuant to subsection (1) or withhold, conceal, destroy or refuse to produce any information or record reasonably required for the purpose of the examination.

duty to cooperate

fees

(4) The Commission may charge a registrant a prescribed fee for an examination made under this section.

SOURCES: Ontario Securities Act, s. 33; Ontario Securities Act, 1978, s. 18; ALI Federal Securities Code, s. 1806(g).

Cease trading
orders by
Commission:
distribution

14.04 (1) Where the Commission believes that

- (a) a security is being traded in connection with a distribution contrary to section 5.02 or 5.05,
- (b) a prospectus, summary prospectus, preliminary prospectus, block distribution circular or any other document used in connection with a distribution contains a misrepresentation or omits a material fact required to be included,
- (c) any of the circumstances specified in section 5.09 as the basis for a refusal to issue a receipt for a prospectus exists, or
- (d) an issuer, selling securityholder or underwriter fails to provide information, including financial statements, relating to the issuer or the distribution that is reasonably requested by the Commission,

the Commission may order that all trading in connection with the distribution cease.

secondary
trading

(2) Where the Commission believes that

- (a) a material fact relating to an issuer of a security has not been disclosed and become public,
- (b) trading in a security or fluctuations in the price of a security requires explanation, or
- (c) it is otherwise in the public interest or necessary for the protection of investors,

the Commission may order, subject to such conditions as it considers appropriate, that trading cease in respect of any security for a period specified by it.

personal

(3) Where the Commission believes that it is necessary in the public interest or for the protection of investors, it may by order prohibit, subject to such conditions as it considers appropriate, a person who violates a provision of this Act, a regulation or a by-law from trading in securities or from trading a specified security.

summary order

(4) The Commission may make an order under subsection (1) or (3) without holding a hearing as required by section 15.17, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed.

summary order

(5) The Commission may make an order under subsection (2) without holding a hearing as required by section 15.17, but

it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed, unless the order was made pursuant to paragraph (2)(a), in which case the Commission may extend it until the material fact is disclosed and becomes public.

(6) The Commission shall forthwith give notice of an order ^{notice} under this section to

- (a) each person named in the order,
- (b) the issuer of a security specified in the order,
- (c) any other person the Commission believes is directly affected by the order, and
- (d) if the order is made pursuant to subsection (1) or (2), every person registered under Part 8 of this Act,

and shall include notice of the order in a regular periodical published by it.

(7) No person shall trade in contravention of an order under ^{prohibition} this section.

SOURCES: Ontario Securities Act, ss. 19(5), (6), (7), 40(1), 62, 63(2), 144; Ontario Securities Act, 1978, ss. 67, 69, 123, 124; ALI Federal Securities Code, ss. 1808(d), (f), 1817(b)(4), (5).

14.05 (1) Where the Commission believes that it is necessary for the protection of investors in or outside of Canada to prevent a person from dealing with money, securities or other property under his control or direction, it may, in writing, order

- (a) him to retain all money, securities or other property in his possession,
- (b) him to refrain from withdrawing or otherwise dealing with any money, securities or other property from any other person holding it on deposit, under control or for safekeeping, or
- (c) any other person to hold any money, securities or other property held on deposit, under control or for safekeeping for him,

until the order is revoked or modified in writing.

(2) An order under subsection (1) does not apply to money or securities in a clearing agency or to securities in the process of transfer by a transfer agent unless it expressly includes them.

(3) An order under subsection (1) applies

- (a) to the offices, branches or agencies of a deposit-taking institution that are named in it; and

^{Freeze order by Commission}

^{securities in clearing agency}

^{application to deposit-taking institutions}

(b) to all offices, branches, subsidiaries or agencies of the institution if

- (i) a copy of the order is sent to its head office,
- (ii) the institution has a reasonable opportunity to notify the office, branch, subsidiary or agency in which the money, securities or other property is so held, and
- (iii) the institution and its offices, branches, subsidiaries or agencies have a reasonable opportunity to identify any money, securities or other property held on deposit, under control or for safekeeping for the person named in the order.

modification or
revocation of
order

(4) A person named in or directly affected by an order under subsection (1) may apply to the Commission to clarify, modify or revoke the order.

registration of
notice

(5) Where the Commission makes an order under subsection (1), it may give written notice of the order to a public official whose duties include the maintenance of a public register of interests in property, and the official shall in accordance with the applicable procedure register the notice against any property specified in it of the person named in the order.

summary order

(6) Subsections 14.04(4) and (6) apply to an order made under this section.

SOURCES: Ontario Securities Act, s. 26; Ontario Securities Act, 1978, s. 16.

Compliance
order

14.06 (1) The Commission may apply to a court for an order requiring compliance with or restraining a violation of a provision of this Act, a regulation, a by-law or a Commission order.

by-laws

(2) The Commission shall not make an application under subsection (1) in relation to a violation of a by-law unless

- (a) the self-regulatory organization of which the respondent is a member is unable or unwilling to take appropriate action, or
- (b) the Commission believes that an application is otherwise necessary in the public interest or for the protection of investors.

SOURCES: Ontario Securities Act, s. 143; Ontario Securities Act, 1978, s. 122; ALI Federal Securities Code, s. 1819(a).

Appointment of
receiver

14.07 (1) Where the Commission believes that it is necessary in the public interest or for the protection of investors to prevent

- (a) a person who has violated this Act, a regulation or a by-law, or
- (b) a person whose registration under this Act has been suspended or revoked from dealing with property under his control or direction, it may apply to a court and the court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interests of investors or persons whose property is controlled by the violator or registrant, creditors or securityholders of the violator or registrant, or members of the registrant to do so.

(2) A court may make an order under subsection (1) on an *ex parte* application by the Commission for a period not exceeding fifteen days. *ex parte order*

SOURCES: Ontario Securities Act, s. 27; Ontario Securities Act, 1978, s. 17; ALI Federal Securities Code, s. 1819(b).

14.08 (1) The Commission may apply to a court for leave to bring an action in the name and on behalf of an issuer and the court may grant leave if it is satisfied that

"Derivative" action by Commission

- (a) the Commission has reasonable grounds for believing that a cause of action exists under the Act, and
- (b) the Commission gave reasonable notice to the issuer who refused or failed to commence an action.

(2) The Commission may apply to a court for leave to bring an action in the name and on behalf of a securityholder and the court may grant leave if it is satisfied that

substitute action by Commission

- (a) the Commission has reasonable grounds for believing that a cause of action exists under the Act, and
- (b) the securityholder has failed or is unable to commence the action.

(3) The Commission may apply to a court for leave to appear or intervene in an action under this Act and the court may grant leave on such terms as it considers appropriate.

appearance or intervention by Commission

(4) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened in by it in a regular periodical published by it.

publication of terms of settlements

SOURCES: Canada Business Corporations Act, ss. 119(6), 232, 235(2); Ontario Securities Act, s. 114; Ontario Securities Act, 1978, s. 132; ALI Federal Securities Code, ss. 1819(d), (k), (n).

14.09 In an action under Part 13 or an application under this Part a court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

Court powers to grant ancillary remedies

- (a) an order requiring restitution or disgorgement of profits,
- (b) an order appointing a receiver or receiver-manager,
- (c) an order restraining the conduct complained of,
- (d) an order requiring compliance with a provision of this Act, a regulation, a by-law or a Commission order, or
- (e) an order requiring disclosure of any information.

SOURCES: Canada Business Corporations Act, s. 234(3); ALI Federal Securities Code, ss. 1723(g), 1819(l).

Offences

14.10 (1) A person who

- (a) knowingly or recklessly makes a misrepresentation in violation of a provision of this Act, a regulation under it or a by-law,
- (b) knowingly or recklessly makes a misrepresentation to the Commission in connection with an investigation under section 14.01 or 14.02, or
- (c) knowingly or recklessly violates section 4.02, section 5.02, a provision of Part 12, other than section 12.03 or 12.10 or subsection 12.04(1) or (3), or a provision of this Act requiring registration

is guilty of an indictable offence and is liable to a fine of \$25,000 or to imprisonment for ten years or to both.

Offences

(2) A person who knowingly or recklessly violates a provision of this Act or the regulations that is not specified in subsection (1) or an order of the Commission is guilty of an indictable offence and is liable to a fine of \$5,000 or to imprisonment for one year or to both.

Offences

(3) A person who fails without reasonable excuse to obey an order of the Commission under section 5.07 or a subpoena or other request or summons under subsection 14.01(2) or (3), 14.02(2) or 14.03(3) or to permit entry under subsection 9.12(3), 14.01(4) or 14.03(3) is guilty of an offence punishable on summary conviction and is liable to a fine of \$2,500 or to imprisonment for six months or to both.

defence of
reliance on legal
advice

(4) Reasonable reliance, including reliance on advice of counsel, in good faith upon a statement of the law contained in

- (a) a provision of this Act or a regulation under it,
- (b) a judicial judgment or opinion, or
- (c) an order or official release of the Commission

is a defence in a proceeding under this section.

Sentence

(5) No person shall be sentenced to imprisonment for a violation of a regulation, by-law or order that would not be a violation of this Act but for the regulation, by-law or order, if he was not aware of its existence at the time of the offence.

SOURCES: Criminal Code, ss. 320(3) and 338; Ontario Securities Act, s. 137; Ontario Securities Act, 1978, s. 118; ALI Federal Securities Code, ss. 1821(a), (d), (e), (f).

14.11 If a person is guilty of an offence under section 14.10, then, whether or not the person has been prosecuted or convicted, any director, officer, control person as defined in subsection 13.17(3) or supervisor of the person who knowingly or recklessly authorizes, permits or acquiesces in the offence is also guilty of the offence and liable to the penalty specified for it.

SOURCE: Canada Business Corporations Act, s. 243(2).

Secondary
criminal
liability

PART 15**ADMINISTRATION**

15.01 (1) A commission to be known as the Canadian Securities Commission is hereby established consisting of not more than seven full-time commissioners and not more than ten part-time commissioners to be appointed by the Governor in Council.

Canadian
Securities
Commission

(2) A full-time commissioner shall be appointed for a term not exceeding seven years and a part-time commissioner for a term not exceeding five years and a commissioner may be reappointed upon the expiration of his term of office.

term of office

(3) A commissioner ceases to hold office upon attaining the age of seventy years and may be removed at any time by the Governor in Council for cause.

termination and
removal

(4) A full-time commissioner shall devote the whole of his time to the performance of his duties under this Act.

duties of
full-time
commissioner

SOURCES: Anti-dumping Act, R.S.C. 1970, c. A-15, s. 21; Canadian Radio-television and Telecommunications Commission Act, Stats. Can., 1974-75, c. 49, ss. 3, 4; Telecommunications Act, s. 15; Ontario Securities Act, ss. 2, 3(1); Ontario Securities Act, 1978, ss. 2, 3(1); ALI Federal Securities Code, s. 1802(a).

15.02 (1) The Governor in Council shall designate a full-time commissioner as Chairman of the Commission and a full-time commissioner as Vice-Chairman.

Duties of
Chairman and
Vice-Chairman

(2) The Chairman is the chief executive officer of the Commission and has supervision over and direction of the work and the staff of the Commission including

Chairman

- (a) the assignment of the work among the commissioners and the appointment of commissioners to sit at hearings, and
- (b) generally, the conduct of the work of the Commission, the management of its internal affairs and the duties of its staff.

(3) If the Chairman is absent or incapacitated or if the office of Chairman is vacant, the Vice-Chairman shall exercise the powers and perform the duties and functions of the Chairman.

Vice-Chairman

(4) If the Chairman and Vice-Chairman are absent or incapacitated or if their offices are vacant, the Commission

acting
Chairman

may authorize a full-time commissioner to act as Chairman for the time being.

SOURCES: Anti-dumping Act, ss. 21(5), 23; Canadian Radio-television and Telecommunications Commission Act, s. 6; Telecommunications Act, s. 17; Ontario Securities Act, ss. 2(1), 3(1), (2); Ontario Securities Act, 1978, ss. 2(2), 3(1), (2); ALI Federal Securities Code, s. 1802(b).

Qualifications of commissioners:
conflicts of interest

15.03 (1) A person shall not be appointed or continue as a commissioner if, directly or indirectly, as owner, security-holder, director, officer, partner, employee or otherwise, he

- (a) is engaged in the securities business, or
- (b) has a pecuniary or proprietary interest in
 - (i) a securities firm, or
 - (ii) a self-regulatory organization.

disclosure of interest

(2) If an interest prohibited by subsection (1) vests in a commissioner by gift or by will or succession for his own benefit, he shall forthwith disclose the interest to the Chairman and within three months thereafter shall absolutely dispose of the interest.

SOURCES: Canadian Radio-television and Telecommunications Commission Act, s. 5; Telecommunications Act, s. 16.

Remuneration of commissioners

15.04 (1) A full-time commissioner shall be paid a salary fixed by the Governor in Council.

part-time commissioners

(2) A part-time commissioner shall be paid a fee, fixed by Commission rule, for

- (a) attendance at meetings of the Commission or a committee thereof,
- (b) attendance at public hearings held by the Commission or at other engagements that he is requested by the Chairman to attend, or
- (c) any work undertaken for the Commission at the request of the Chairman.

expenses

(3) A commissioner is entitled to be paid travel and living expenses, as fixed by Commission rule, incurred by him in the performance of his duties.

commissioner's superannuation and compensation

(4) A full-time commissioner is deemed to be employed in the Public Service for purposes of the *Public Service Superannuation Act* and of any regulations made pursuant to section 7 of the *Aeronautics Act*.

SOURCES: Canadian Radio-television and Telecommunications Commission Act, ss. 7, 9; Telecommunications Act, ss. 18, 20.

15.05 The officers and employees necessary for the proper conduct of the business of the Commission shall be appointed in accordance with the *Public Service Employment Act*.

Appointment of officers and employees

SOURCES: Canadian Radio-television and Telecommunications Act, s. 8; Telecommunications Act, s. 19.

15.06 (1) The Minister may, with the approval of the Governor in Council, negotiate and enter an agreement with the government of a province respecting

Agreements with provinces: interdelegation

- (a) the exercise of the powers or the performance of the duties, functions or responsibilities of the Commission under this Act by a provincial securities commission or by a person responsible for the administration of the securities act in force in the province, or
- (b) the exercise of powers or the performance of the duties, functions or responsibilities of a provincial securities commission or a person responsible for the administration of the securities act in force in a province by the Commission.

(2) A power, duty, function or responsibility of the Commission to which an agreement entered into under paragraph (1)(a) applies shall be exercised or performed in accordance with this Act and the regulations.

exercise of delegated powers

(3) The Commission

Commission powers and duties

- (a) may exercise any powers or perform any duties, functions or responsibilities conferred on it by an agreement entered into under paragraph (1)(b), and
- (b) shall not, while an agreement entered into under paragraph (1)(a) is in force, exercise any powers or perform any duties, functions or responsibilities conferred on any other person by the agreement, except in accordance with its terms.

SOURCE: Telecommunications Act, ss. 7, 21(2).

15.07 The Commission shall, if so directed by order of the Governor in Council, invite a provincial or other regulatory body to designate any person who performs functions on it equivalent to a commissioner to participate, under conditions specified in the order, with commissioners in any proceeding held by the Commission pursuant to this Act.

Participation of provincial officials in Commission proceedings

SOURCE: Telecommunications Act, s. 27(6).

Commission control of litigation

15.08 Notwithstanding any other act of Parliament, the Commission may employ its own counsel and conduct civil and criminal litigation in its own name and through its own counsel.

SOURCE: ALI Federal Securities Code, s. 1802(h).

Commission power to delegate functions

15.09 (1) The Commission may, by rule or order, delegate any power, duty, function or responsibility conferred on it by this Act or by an agreement entered into under paragraph 15.06(1)(b), other than a power to make regulations, to a commissioner, an employee or administrative unit of the Commission or to a commissioner or employee of another agency of the Government of Canada, a province or a foreign government.

eligibility of delegate

(2) If the Commission delegates power to make an order imposing a sanction on a registrant or denying an exemption to any person, it shall delegate it to a person who has not participated in the investigative or prosecuting functions of the Commission and who is not responsible to or subject to the supervision or direction of a person who has so participated.

eligibility of commissioner on appeal or review

(3) A commissioner who exercises the power of the Commission to make an order under this Act shall not sit on an appeal from his order to or review of his order by the Commission under section 15.18, and if the order is made *ex parte* pursuant to section 14.04 or 14.05 he shall not sit on the subsequent hearing required to be held by the Commission or on any other hearing that follows from the order.

SOURCES: Ontario Securities Act, ss. 3(2), 4; Ontario Securities Act, 1978, ss. 3(2)(4), 6; Telecommunications Act, s. 21(4); Administrative Procedure Act, s. 5, 5 U.S.C. s. 554(d); ALI Federal Securities Code, s. 1802(e).

Appointment of experts

15.10 (1) The Commission may appoint an expert to assist it in any manner that it considers necessary.

policy advice

(2) If the Commission appoints an expert to advise it on the development of specific policies, regulations or other regulatory proposals of the Commission or a self-regulatory organization, the expert shall formulate and report his views to the Commission in writing and his report shall be available to the public.

SOURCES: Ontario Securities Act, ss. 13, 21(8), 146; Ontario Securities Act, 1978, ss. 4, 5, 11(8); ALI Federal Securities Code, s. 1003(b).

Annual report

15.11 (1) The Commission shall, within three months of the end of its fiscal year, send an annual report to the Minister who shall cause it to be laid before Parliament within fifteen

days after he receives it or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(2) An annual report shall be available to the public fifteen days after it is sent to the Minister under subsection (1).

available to
public

(3) An annual report sent to the Minister under subsection (1) shall contain a statement of the Commission's goals and priorities in relation to the development of regulations and its enforcement efforts for the current fiscal year and a summary of the Commission's activities for the preceding fiscal year including

contents

- (a) the number and type of filings made under Parts 4, 5, 6 and 7 of the Act;
- (b) the number and type of registrations under Parts 8 and 9 of the Act;
- (c) the number and type of enforcement actions taken under the Act, including
 - (i) civil actions and interventions in civil actions,
 - (ii) the nature of and reason for any sanction imposed by the Commission against any person, and
 - (iii) any settlement of a civil action commenced or intervened in by the Commission;
- (d) the Commission's oversight activities with respect to every registered self-regulatory organization, including
 - (i) any material recommendation made to an organization for changes in its structure or by-laws and any action taken in response thereto by the organization, and
 - (ii) the number, type and disposition of appeals from decisions of a self-regulatory organization and a summary of the reasons therefor;
- (e) the number of applications for exemption from a requirement of the Act, the number granted and a summary of the bases on which they were granted;
- (f) the fees collected by the Commission and their derivation;
- (g) the regulations proposed or adopted by the Commission, their subject matter and the disposition or status of any regulations proposed but not adopted during the year;
- (h) any activity undertaken to determine the effect of a regulation and the results of such activity;
- (i) any reports submitted to the Commission by an expert pursuant to subsection 15.10(2); and

(j) any other information that the Minister requests or the Commission thinks advisable, including any recommendations for further legislation relating to matters within its jurisdiction.

information requested by Minister

(4) The Minister may at any time request the Commission to provide him with reasonable information concerning any aspect of its administration of this Act, and the Commission shall provide the information requested within a reasonable time.

publication of periodical

(5) The Commission shall publish a periodical on a regular basis containing summaries or details of applications under the Act, orders of the Commission, proposed or final regulations and any other information the Commission thinks advisable.

SOURCES: Anti-dumping Act, R.S.C. 1970, c. A-15, s. 32; Broadcasting Act, R.S.C. 1970, c. B-11, s. 31; Canada Business Corporations Act, s. 123; Telecommunications Act, s. 31; Federal Advisory Committee Act, ss. 6(b), (c); ALI Federal Securities Code, s. 1802(i).

Cooperation with provincial commissions and other agencies

15.12 (1) The Commission shall cooperate with the provincial securities commissions and other persons who are responsible for the administration of a securities act or who exercise regulatory authority over a regulated financial institution under a statute in force in a province in order to minimize duplication of effort and maximize the protection afforded investors in Canada.

cooperation with federal agencies

(2) The Commission and an agency of the Government of Canada that exercises regulatory authority under a statute over a regulated financial institution shall consult and cooperate in order to avoid unnecessary duplication of reporting requirements and enforcement proceedings.

cooperation with foreign agencies

(3) The Commission may cooperate with an agency of a foreign government in connection with the investigation of a violation of this Act or any similar statute whether the activities in question occurred in or outside Canada.

international organizations

(4) The Commission may participate in the work of intergovernmental, national or international organizations dealing with the regulation of securities markets.

SOURCES: An Act to amend the National Transportation Act and the Department of Transport Act, Bill C-33, 30th Parl., 2d Sess., s. 3(3)(e), First reading January 27, 1977; ALI Federal Securities Code, ss. 1803(e), (f), 1904(h).

Procedural rules of Commission

15.13 (1) The Commission may make rules

- (a) respecting the calling of and conduct of business at meetings of the Commission;
- (b) respecting procedures for the initiation and holding of hearings by the Commission;
- (c) delegating duties or other functions of the Commission to a commissioner, employee of the Commission, another person or to a person holding a designated office;
- (d) fixing the fees to be paid to a part-time commissioner for
 - (i) attendance at meetings of the Commission,
 - (ii) attendance at a public hearing of the Commission that he is requested by the Chairman to attend, or
 - (iii) work undertaken for the Commission at the request of the Chairman,
 and fixing the travelling and living expenses, incurred by them in the performance of their duties, to be paid to them; and
- (e) respecting any other matter, whether or not required by this Act, relating to the organization, procedure or practice of the Commission.

(2) A rule made pursuant to paragraph (1)(d) has no effect until it is approved by the Minister.

approval of
Minister

SOURCES: Canadian Radio-television and Telecommunications Commission Act, s. 11; Telecommunications Act, ss. 18, 24; ALI Federal Securities Code, s. 2002(c).

15.14 (1) The Commission may, with the approval of the Governor in Council, make regulations

Regulations:

- (a) classifying persons, securities, trades, distributions, registration under Part 8 or 9, filings, applications and other matters and prescribing requirements appropriate to each class,
- (b) prescribing the format and contents of filings and applications and permitting or requiring incorporation by reference and the filing of copies of documents filed with another government agency,
- (c) prescribing fees for any filing with or other application to the Commission, and
- (d) respecting any other matter authorized by or required to carry out the purposes of this Act.

classifying

disclosure

fees

prescribed

(2) The Commission may, with the approval of the Governor in Council, make regulations with respect to filings

accounting
standards

- (a) prescribing the form and content of financial statements,

- (b) prescribing the accounting principles and standards used in the preparation of financial statements,
- (c) requiring examination of and reporting on financial statements by independent accountants,
- (d) establishing standards of independence for accountants in relation to financial statements, and
- (e) prescribing the form and content of an independent accountant's report.

code of conduct
for commissioners and
employees

(3) The Commission shall, with the approval of the Governor in Council, make regulations establishing a code of conduct governing the activities of commissioners and its employees in order to avoid conflicts of interest and other practices that the Commission considers undesirable.

subdelegation of
rule-making

(4) The Commission may by regulation, in exercising its powers under this section, adopt by reference the by-laws or rules, as amended from time to time, of a self-regulatory organization or a professional self-regulatory body.

SOURCES: Broadcasting Act, R.S.C. 1970, c. B-11, s. 16; Canada Business Corporations Act, ss. 149, 155, 254(1); Telecommunications Act, s. 32; Ontario Securities Act, s. 147; Ontario Securities Act, 1978, s. 139; ALI Federal Securities Code, ss. 1802(d), 1804(a), 1805(a).

Rule-making
procedure

15.15 (1) The Commission shall publish in the *Canada Gazette* and in any regular periodical published by it at least sixty days before the proposed effective date thereof

- (a) a copy of any regulation that it proposes to make,
- (b) a concise statement of the substance and purpose of the regulation proposed,
- (c) a reference to the authority under which the regulation is proposed, and
- (d) a statement of the time, place and nature of any representations under subsection (2).

opportunity to
make representations

(2) After a proposed regulation is published in accordance with subsection (1), the Commission shall afford a reasonable opportunity to interested persons to make representations in writing with respect to the proposed regulation and all such representations shall be available to the public.

oral hearing

(3) The Commission may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a proposed regulation.

(4) The Commission shall publish a concise statement of the basis and purpose of a regulation made by it. publication of basis and purpose

(5) The Commission is not required to comply with subsections (1) and (2), if exceptions

- (a) all persons who will be subject to the regulation are named and the information required by paragraphs (1)(a) to (d) is sent to each of them,
- (b) the regulation is made pursuant to section 15.13 and is not likely to have a substantial impact on the interests of persons, other than commissioners or employees of the Commission, who are affected by it,
- (c) the regulation grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it,
- (d) the regulation has been published and an opportunity for representations given pursuant to subsections (1) and (2), whether or not it has been amended as a result of representations received by the Commission,
- (e) the regulation makes no material substantive change in an existing regulation, or
- (f) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it with the statement required by subsection (4).

(6) Any person may petition the Commission to make, petition for regulation amend or repeal a regulation.

SOURCES: Broadcasting Act, R.S.C. 1970, c. B-11, s. 16(2); Canada Business Corporations Act, ss. 254(2), (3); Administrative Procedure Act, s. 4, 15 U.S.C. s. 553; ALI Federal Securities Code, s. 1804(d).

15.16 (1) The Commission may make an order on its own motion or on application by an interested person Commission orders:

- (a) classifying a person, security, trade, distribution, registration under Part 8 or 9, filing, application or other matter and imposing requirements appropriate to the class, classifying
- (b) permitting or requiring incorporation by reference in a filing or application and the filing of copies of documents filed with another government agency, and disclosure
- (c) respecting any other matter authorized by or required to carry out the purposes of this Act. prescribed

declaratory
orders

(2) A declaratory order or an order granting an exemption is effective against all persons, but the Commission shall by order revoke or modify such an order when it finds that a determination reflected in it is no longer consistent with the facts.

SOURCE: ALI Federal Securities Code, ss. 1804(a), 1817(a).

Procedure for
making orders

15.17 (1) The Commission shall, before making a final order, provide a reasonable opportunity for a hearing to each person directly affected and shall give reasonable notice to each such person and to any interested self-regulatory organization including

- (a) a statement of the time, place and purpose of the hearing,
- (b) a reference to the statutory authority under which the hearing will be held,
- (c) a concise statement of the allegations of fact and law, and
- (d) a statement that if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.

Commission
powers

(2) The Commission may

- (a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing and to produce all records relating to the subject of the hearing that are in his possession or under his control, whether they are located in or outside Canada, and
- (b) compel a person to give evidence on oath, affirmation or otherwise as it thinks necessary, orally or in writing.

open hearings

(3) A hearing under subsection (1) shall be open to the public unless the Commission provides otherwise, by rule or order, to protect the interests of the persons affected, but if all persons directly affected and appearing so request, a hearing shall be open to the public.

right to counsel

(4) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to rules adopted pursuant to subsection (10), may present evidence and argument and may cross-examine witnesses at the hearing.

right to counsel

(5) A witness at a hearing under subsection (1) may be advised by counsel.

admissible
evidence

(6) The Commission may admit as evidence at a hearing any oral testimony or documentary exhibit that it considers relevant to the subject matter of the proceeding and may take notice of any fact that may be judicially noticed and of any

generally recognized scientific or technical fact, information or opinion within its area of expertise.

(7) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed. transcript

(8) The Commission shall

final orders

- (a) make a final order in writing and state the findings of fact on which it is based and the reasons for it,
- (b) send a copy of the order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing, and
- (c) publish a copy of the order and reasons or a summary thereof in a periodical published by it but the Commission may omit the name of an affected person from an order published under this paragraph.

(9) Subsection (1) does not apply to an order that

exceptions

- (a) commences an investigation under section 14.01 or 14.02,
- (b) is essentially procedural,
- (c) denies or refuses to entertain an application for an exemption or for a declaratory order, or
- (d) does not adversely affect the rights or interests of any person.

(10) The Commission may make rules prescribing hearing and prehearing procedures in relation to a hearing under subsection (1), including, without limiting the generality of the foregoing, rules procedural rules

- (a) limiting a hearing to written submissions, oral argument or both when there is no genuine issue as to a material fact,
- (b) governing the admissibility of documentary evidence including affidavits and applications, and
- (c) providing for intervention as a party or a limited right to be heard by any interested person.

SOURCES: Ontario Securities Act, s. 5; Statutory Powers Procedure Act, 1971, Stats. Ont., 1971, c. 47; Administrative Procedure Act, s. 5, 5 U.S.C. s. 554; ALI Federal Securities Code, s. 1817.

15.18 (1) A person directly affected by a final order made pursuant to authority delegated under subsection 15.09(1) or by an order of a self-regulatory organization under section 9.09 may appeal the order to the Commission.

Appeal of orders
made by
delegates and
SROs

Commission review

(2) The Commission may on its own motion review an order made pursuant to authority delegated under subsection 15.09(1) or by a self-regulatory organization under section 9.09 and shall provide a reasonable opportunity for a hearing and give reasonable notice to each person, including a self-regulatory organization, directly affected by the order.

Commission's powers

(3) On an appeal or review under this section the Commission may, subject to section 9.10, confirm the order or make such orders as it considers appropriate.

stay of order

(4) An order that is subject to appeal or review under this section takes effect immediately, but the Commission or the person who made the order may grant a stay pending the decision of the Commission.

procedural rules

(5) The Commission may make rules prescribing the procedures for appeals and review of orders of its delegates and self-regulatory organizations.

SOURCES: Ontario Securities Act, ss. 3(3), 28; Ontario Securities Act, 1978, ss. 3(4), 8; Administrative Procedure Act, s. 8(a), 5 U.S.C. s. 557(a); ALI Federal Securities Code, ss. 810(b), (c), 1802(f).

Judicial review of Commission orders

15.19 (1) A person directly affected by a final order of the Commission may appeal the order to a court.

exhaustion of administrative remedies

(2) No appeal may be taken under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the order pursuant to section 15.18.

stay of order

(3) An order that is subject to appeal under this section takes effect immediately, but the Commission or a court may grant a stay pending the hearing of the appeal.

Commission right to appear

(4) The Commission is entitled to appear and be heard on the merits on an appeal under this section or on any other application to a court relating to the exercise by the Commission of its powers.

powers of court

(5) On an appeal under this section, a court may make or may direct the Commission to make any order that the Commission is authorized to make and that the court considers proper or it may remand the case to the Commission for further proceedings subject to any conditions the court considers proper.

cease trading and freeze orders

(6) On an appeal under this section, a court may only confirm or revoke a cease trading order under section 14.04 or a freeze order under section 14.05, and the court may revoke such an order only if it is arbitrary, capricious or an abuse of discretion at the time when it is made or at the time of the appeal.

(7) An order made under section 9.07 or 9.08, a summary order and an order that refuses to entertain or denies an application for an exemption or declaration may not be the subject of an appeal under this section.

(8) Notwithstanding an order of a court on an appeal under this section, the Commission may make a further order on new evidence or where there is a change in circumstances and every such order is subject to this section.

SOURCES: Ontario Securities Act, s. 29; Ontario Securities Act, 1978, s. 9; Administrative Procedure Act, s. 10, 5 U.S.C. s. 706; ALI - Federal Securities Code, s. 1818(a).

15.20 (1) A person affected by a regulation of the Commission may appeal it to a court.

(2) A regulation that is subject to appeal under this section takes effect at the time specified by the Commission, but the Commission or a court may grant a stay pending review.

(3) Upon receipt of a notice of appeal under this section, the Commission shall send to the court to which the appeal is taken

- (a) a copy of the material published pursuant to subsection 15.15(1) and any document referred to therein,
- (b) any representations made and other documents submitted by interested persons pursuant to subsection 15.15(2),
- (c) a transcript of any oral presentation made in relation to the making of the regulation and of any oral evidence presented,
- (d) any other factual information that was considered by the Commission in connection with the making of the regulation or that the Commission considers pertinent to the regulation,
- (e) a report of any expert received or considered by the Commission in relation to the making of the regulation,
- (f) a copy of the regulation and the concise statement of its basis and purpose published pursuant to subsection 15.15(4) and any documents referred to therein, and
- (g) any other material in the possession or under the control of the Commission that the court requires.

(4) The Commission is entitled to appear and be heard on the merits on an appeal under this section.

(5) On an appeal under this section, a court may confirm or revoke a regulation or may remand the matter to the Commiss-

unappealable orders

reconsideration by Commission

Judicial review of regulations

stay of regulation

record for review

Commission right to appear

powers of court

sion for further proceedings subject to any conditions the court considers proper, but the court may revoke a regulation only if

- (a) it is arbitrary, capricious or an abuse of discretion,
- (b) it is in excess of the Commission's jurisdiction,
- (c) it is contrary to the *Canadian Bill of Rights*,
- (d) it was made in contravention of section 15.15, or
- (e) a specific material fact found by the Commission after an evidentiary hearing convened pursuant to subsection 15.15(3) is not supported by the evidence.

review of
by-laws

(6) For the purposes of this section, an order of the Commission under section 9.07 or 9.08 is a "regulation".

SOURCES: Administrative Procedure Act, s. 10(e), 5 U.S.C. s. 706; ALI Federal Securities Code, s. 1818(b).

Exclusivity of
review under
sections 15.19
and 15.20

15.21 A matter that may be appealed pursuant to section 15.19 or 15.20 may not be appealed or reviewed in any other manner, but its validity may be raised by way of a defence to an action or other proceeding under this Act.

SOURCES: Ontario Securities Act, s. 145(1); ALI Federal Securities Code, s. 1818(d).

Immunity of
commissioners
and employees
from civil
liability

15.22 No action or other proceeding for damages shall be instituted against a commissioner or an employee or agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a power under this Act or for any neglect or default in the performance or exercise in good faith of such a duty or power.

SOURCES: Ontario Securities Act, s. 145(2); Ontario Securities Act, 1978, s. 138(1).

Misuse of official
information

15.23 (1) No commissioner and no person employed or retained by the Commission shall make use of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage.

disclosure to
government
agencies

(2) No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Commission to any person other than an official or employee of the Government of Canada or the government of a province or another country or state in connection with the enforcement of this Act or similar legislation.

person who
receives
information

(3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).

SOURCE: ALI Federal Securities Code, s. 2004(b).

15.24 The Commission may recommend to the Receiver General for Canada that he refund a fee or the part of it that the Commission thinks fair and reasonable to a person whose application to or filing with the Commission is refused or withdrawn.

Refund of fees

SOURCES: Ontario Securities Act, s. 17; Ontario Securities Act, 1978, s. 7.

15.25 Expenditures incurred by the Commission in connection with the administration and enforcement of this Act shall be paid out of money appropriated by Parliament therefor.

Parliamentary
appropriation
for Commission
expenditures

SOURCES: Broadcasting Act, R.S.C. 1970, c. B-11, s. 32; National Energy Board Act, R.S.C. 1970, c. N-6, s. 92.

PART 16

GENERAL

16.01 (1) This act does not apply to a trade that is initiated and completed in a single province otherwise than through the facilities of a registered securities exchange.

Application of
Act: territorial

(2) A trade in a distribution by a corporate issuer in a province other than its province of incorporation is not initiated and completed in a single province.

distribution

SOURCE: New; *cf.* ALI Federal Securities Code, s. 1902.

16.02 (1) This Act applies to

Application of
Act: including
extraterritorial

- (a) a trade in or inducement to hold a security and a solicitation of proxies or other circularization of security-holders that occurs in Canada whether or not it is initiated outside Canada;
- (b) a nonresident employee or member of a registrant and an insider as defined in section 7.11 who is not resident in Canada insofar as the Act deals with him in his capacity as an employee, member or insider;
- (c) an attempt or solicitation in or outside of Canada to commit a violation of this Act; and
- (d) any conduct, including a failure to disclose or file information,
 - (i) a significant constituent element of which occurs in Canada, or
 - (ii) no constituent element of which occurs in Canada but which has a substantial effect within it as a direct or foreseeable result of the conduct.

(2) For the purposes of this Act, any conduct of an issuer, other than a registrant, that is incorporated in Canada and any conduct of a subsidiary of such an issuer has a substantial effect in Canada within the meaning of subparagraph (1)(d)(ii) regardless of where the conduct occurs.

Canadian issuer

(3) Part 8 does not apply to

- (a) a nonresident broker, dealer or adviser who ordinarily carries on business as such outside of Canada and who conducts business in Canada only with a previous, non-Canadian customer or client who is temporarily in Canada, or
- (b) an underwriter who participates in a distribution as a member of an underwriting group only by taking down

exemptions:
nonresident
brokers, dealers
and advisers

underwriters

nonresident issuers

securities for sale outside of Canada and who does not otherwise carry on business in Canada as an underwriter, broker or dealer.

Commission's powers

(4) The Commission shall prescribe the extent to which Part 4 applies to an issuer that is not incorporated in or a resident of Canada.

(5) A power granted to the Commission under this Act may be exercised in or outside Canada.

SOURCES: Quebec Securities Act, s. 50; ALI Federal Securities Code, ss. 1905(a)-(c).

Consent to service and submission to jurisdiction

16.03 (1) A person who is not incorporated in or is not a resident of Canada and who

- (a) files a registration statement under Part 4,
- (b) makes a distribution to which Part 5 applies,
- (c) applies for registration under Part 8 or 9, or
- (d) is a director or officer of a person referred to in paragraph (a), (b) or (c) or becomes a director or officer of a registrant or a reporting issuer

shall, within a time prescribed by the Commission, file with the Commission a consent to service in prescribed form.

distribution

(2) Where a distribution to which Part 5 applies is made, an underwriter or expert whose consent is filed pursuant to paragraph 16.07(d) shall file a consent to service as required by subsection (1).

effect of consent to service

(3) A consent to service filed pursuant to subsection (1)

- (a) shall appoint a person designated by the Commission by regulation as an agent for service, and
- (b) is an express consent and submission to jurisdiction in connection with an action or proceeding under this Act.

SOURCE: ALI Federal Securities Code, ss. 1905(e)(1)-(3).

Deposit of security by nonresident

16.04 The Commission may by regulation require

- (a) a reporting issuer,
- (b) a person who makes a distribution to which Part 5 applies, or
- (c) a registrant

who is not incorporated in or a resident of Canada to deposit or maintain in Canada assets of a value or to obtain a bond for an amount prescribed by the Commission.

SOURCE: New.

Subject matter jurisdiction of courts and venue

16.05 (1) A civil action under this Act, other than an application under section 14.06 to require compliance with an

order of the Commission made pursuant to section 14.01 or 14.02, may be brought in a superior court where

- (a) a trade or any conduct constituting an element of a violation of the Act occurs,
- (b) the defendant is a resident or carries on business, or
- (c) the plaintiff is a resident, if the defendant is not incorporated in or a resident of and does not carry on business in Canada.

(2) An application under section 14.06 to require compliance with an order of the Commission made pursuant to section 14.01 or 14.02 may be made in a superior court where the defendant is resident or carries on business.

application to enforce compliance

(3) Notwithstanding section 30 of the *Federal Court Act*, an appeal of an order or regulation under section 15.19 or 15.20 may be brought in the appellate division of a superior court where the person bringing the appeal is a resident or carries on business.

appeal of Commission order or regulation

(4) Notwithstanding section 18 of the *Federal Court Act*, an application to review any action of the Commission other than an appeal referred to in subsection (3) may be made in a superior court where the applicant is a resident or carries on business.

review of Commission decision

(5) A criminal action under Part 14 may be brought, in addition to any place in which a prosecution may be brought by virtue of the *Criminal Code*, in a superior court other than the Federal Court of Canada where

criminal prosecution

- (a) a trade or any conduct constituting an element of the violation occurs, or
- (b) the accused is a resident or carries on business.

(6) For the purposes of this section, a violation of a filing requirement occurs both where the sending of the filing begins and where it ends and a failure to file occurs where the filing was required to be made.

filings

(7) A body authorized to make rules of practice and procedure for proceedings in a superior court may make rules for the transfer, stay or consolidation of actions under section 13.04, 13.07, 13.08, 13.09 and 13.16 that are based on the same conduct, whether or not all of the actions initiated are within the jurisdiction of the court.

procedural rules for impersonal actions

SOURCES: Canada Business Corporations Act, s. 2(1) "court", "court of appeal"; Combines Investigation Act, s. 44.1; Divorce Act, R.S.C. 1970, c. D-8, s. 19; Interpretation Act, s. 28 "superior court"; Ontario Securities Act, s. 29; Ontario Securities Act, 1978,

s. 9; ALI Federal Securities Code, ss. 1822(a), (c), (f), (g).

Personal jurisdiction:
service of process

16.06 (1) A defendant in a civil action under this Act may be served where he is resident or is found, whether in or outside Canada.

criminal process

(2) A person accused of an offence specified in section 14.10 may be served with a summons where he is resident or is found, whether in or outside Canada.

SOURCE: ALI Federal Securities Code, s. 1822(h).

Filing of documents

16.07 The Commission may by regulation

- (a) designate the persons required to sign a filing;
- (b) prescribe the time as of which a document is filed;
- (c) require a copy of a filing to be sent to any person, including without limiting the generality of the foregoing,
 - (i) an issuer
 - (ii) a self-regulatory organization, and
 - (iii) a public authority; and
- (d) require written consent to the inclusion of his name in a filing by an expert who is named as having prepared or certified any part of the filing or as having prepared or certified a report, opinion or valuation that is included in it.

SOURCES: Ontario Securities Act, ss. 50-53; Ontario Securities Act, 1978, ss. 57, 58; ALI Federal Securities Code, ss. 1803(d), 2003(a), (c)-(e).

Maintenance and availability to public of filings

16.08 (1) Subject to subsection (3), all filings shall be available for inspection by any person during the Commission's usual business hours.

copies of filings

(2) Subject to subsection (3), the Commission shall furnish any person with a copy or certified copy of a filing on payment of a reasonable fee prescribed by it, and where the Commission maintains filings other than in written form pursuant to subsection (4) it shall furnish a copy in intelligible written form.

confidential filings

(3) The Commission may by regulation or order designate any filing, class of filings or part of a filing as confidential and any matter so designated is not subject to subsections (1) and (2).

maintenance of filings

(4) The Commission may maintain filings in bound or loose-leaf form or in photographic film form or may enter or record them by a system of mechanical or electronic data processing or by any other information storage device that is capable of

reproducing any required information in intelligible written form within a reasonable time.

(5) The Commission is not required to produce a filing after six years from the date on which it is filed or such other period as it prescribes.

retention of filings

SOURCES: Canada Business Corporations Act, ss. 259, 260; Ontario Securities Act, 1978, s. 137; ALI Federal Securities Code, Reporter's Revision of Text of Tent. Drafts Nos. 1-3, ss. 1703(a)-(c).

16.09 (1) A statement concerning

- (a) the registration of any person,
- (b) the filing of any document,
- (c) the date on which facts that form the basis of an action or proceeding first came to the attention of the Commission, and
- (d) any other matter in connection with the administration of this Act

Admissibility in evidence of Commission certificate and information in filings

that purports to be certified by the Commission is admissible in evidence in any action or proceeding and is proof of the facts certified, without proof of the signature or official character of the person who signed it.

(2) Information reproduced from filings maintained other than in written form pursuant to subsection 16.08(4), if certified by the Commission, is admissible in evidence to the same extent as the original filing would have been.

information from automated system

SOURCES: Canada Business Corporations Act, ss. 249(2), 260(2)(b); Ontario Securities Act, s. 148; Ontario Securities Act, 1978, ss. 10(3), 136.

16.10 (1) Subject to subsection (2), a statement that is included in

- (a) a filing or otherwise published in accordance with this Act, and
- (b) a report made to a registered self-regulatory organization in accordance with this Act or the by-laws of the organization

Defamation in filings: privilege

is privileged in an action for defamation.

(2) Subsection (1) does not apply if a plaintiff proves that the defendant knew that the statement was false or acted in reckless disregard of whether it was false.

loss of privilege where knowledge or recklessness

(3) A person who proves that he attempted in good faith to persuade the Commission or a self-regulatory organization that a statement referred to in subsection (1) was false and for that reason should not be published is not liable for defamation.

compulsion by Commission

SOURCES: Canada Business Corporations Act, ss. 166, 227; Ontario Securities Act, s. 145(2); Ontario Securities Act, 1978, s. 138(2); ALI Federal Securities Code, ss. 2008(a)-(b).

Immunity from civil liability

16.11 An officer or employee of a registered self-regulatory organization is not liable in damages for an act done in good faith in the performance of a duty or exercise of a power under this Act or for any neglect or default in the performance or exercise in good faith of such a duty or power.

SOURCE: ALI Federal Securities Code, s. 2008(d).

Destruction of required records

16.12 No person shall destroy, mutilate or alter a record or document required to be kept by him under this Act for six years after it is prepared or such other period as the Commission prescribes, unless the alteration is made to correct an error.

SOURCE: ALI Federal Securities Code, s. 1604(b).

Determination of securityholders

16.13 (1) A person is entitled to rely on the securities register of an issuer or on a list of securityholders obtained pursuant to section 10.14 or 10.15 to determine

- (a) the status of a person as a securityholder,
- (b) the residence of a securityholder, and
- (c) the number of holders of outstanding securities of an issuer

for purposes of compliance with this Act, unless he knows that the information contained therein is false or acts in reckless disregard of whether it is false.

joint holders

(2) Joint holders of a security shall be counted as one holder of the security in connection with a determination of the number of holders of outstanding securities of an issuer for purposes of compliance with this Act.

SOURCE: Canada Business Corporations Act, s. 187 "exempt offer" (c).

Receipt of mailed documents

16.14 A person, other than the Commission, to whom a document is sent by prepaid mail pursuant to this Act is deemed to have received it in the ordinary course of the mails unless he proves that he did not receive it.

SOURCES: Ontario Securities Act, s. 64(4); Ontario Securities Act, 1978, s. 70(4).

Application to Crown

16.15 This Act is binding on Her Majesty in right of Canada or a province and any agent thereof.

SOURCE: Telecommunications Act, s. 5.

16.16 (1) The *Proposals for a Securities Market Law for Canada*, any other report presented or made to or laid before Parliament in connection with the *Proposals* or this Act before it was passed and the published proceedings of Parliament and its committees in connection with the passage of this Act may be considered in order to determine the purpose or meaning of a provision of the Act.

(2) This Act shall be interpreted in the manner most likely to give effect to the provisions of any treaty between Canada and another country relating to the regulation of trading in securities, whether the treaty is signed before or after this Act comes into force. treaties

SOURCE: New.

16.17 Each provision and each Part of this Act is severable, and if any provision or Part is determined to be beyond the jurisdiction of Parliament to enact, the remaining provisions and Parts of the Act shall continue in force. Severability of provisions of Act

SOURCE: ALI Federal Securities Code, s. 2009.

16.18 This Act comes into force on the date proclaimed by the Governor in Council. Effective date

